

AMENDED IN SENATE APRIL 13, 2000

SENATE BILL

No. 2077

Introduced by Senator Ortiz

February 25, 2000

An act to amend ~~Section 1770 of~~ Sections 1770, 1771, 1771.2, 1772, 1773, 1774, 1775, 1776.6, 1777, 1777.2, 1777.4, 1779, 1779.2, 1779.4, 1779.6, 1779.8, 1779.10, 1780, 1780.2, 1780.4, 1781, 1781.2, 1781.4, 1781.6, 1781.8, 1781.10, 1782, 1783, 1783.2, 1784, 1785, 1786, 1786.2, 1787, 1788, 1788.2, 1788.4, 1789, 1789.2, 1789.4, 1789.6, 1789.8, 1793.5, 1793.6, 1793.7, 1793.8, 1793.9, 1793.11, 1793.13, 1793.15, 1793.17, 1793.19, 1793.21, 1793.23, 1793.25, 1793.27, 1793.29, 1793.50, 1793.56, 1793.58, 1793.60, and 1793.62 of, to amend and renumber Sections 1771.9 and 1771.11 of, to add Sections 1771.3, 1772.2, 1779.7, and 1783.3 to, to repeal Section 1771.8 of, and to repeal and add Sections 1771.4, 1771.5, 1771.6, and 1771.7 of, the Health and Safety Code, relating to continuing care contracts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 2077, as amended, Ortiz. Continuing care contracts: retirement communities: elderly.

Existing law contains provisions relating to supervision of life care contracts, also known as continuing care contracts, including requirements governing continuing care communities and contracts.

This bill would revise and recast these provisions, including changes to the definitions used in these provisions, rights of continuing care community residents, requirements for the

obtaining of a certificate of authority for a continuing care community, and continuing care contract requirements.

Existing law creates the Continuing Care Provider Fee Fund, which is continuously appropriated to the State Department of Social Services for purposes of administering continuing care retirement community provisions. The fund consists of fees paid to the department pursuant to these provisions.

This bill would make various changes in provisions relating to the establishment of fees, including requirements pertaining to the establishment of fees for changes in continuing care provider organizations, thus increasing payments to the fund and thereby constituting an appropriation.

Existing continuing care provisions specify that any entity that sells deposit subscriptions that either proposes to promise to provide care without having a current and valid permit to sell these subscriptions or fails to place any consideration into an escrow account is guilty of a misdemeanor.

This bill would provide that these misdemeanors relate to any entity that accepts deposits, rather than any entity that sells deposit subscriptions.

Because the bill would change the definition of a crime, it would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law expresses the Legislature's findings, declarations, and intent regarding continuing care retirement communities.~~

~~This bill would include within the Legislature's findings, declarations, and intent the need to define the types of continuing care contracts, reserve requirements, and the types of disclosure to be provided to retirement community residents.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

~~SECTION 1. Section 1770 of the Health and Safety Code is amended to read:~~

~~1770. The Legislature finds, declares, and intends all of the following:~~

~~(a) Continuing care retirement communities are an alternative for the long-term residential, social, and health care needs of California's elderly residents, seek to provide a continuum of care, minimize transfer trauma, and allow for provision of services in an appropriately licensed setting.~~

~~(b) Because elderly residents often expend a significant portion of their savings in order to purchase care in the retirement community and, thereby, expect to receive care at the retirement community for the rest of their lives, tragic consequences can result from a continuing care provider becoming insolvent or unable to provide responsible care.~~

~~(c) There is a need for disclosure concerning the terms of agreements made between prospective residents and the continuing care provider, and concerning the operations of the continuing care retirement community.~~

~~(d) Providers of continuing care should obtain a certificate of authority to enter into continuing care contracts and be monitored and regulated by the State Department of Social Services.~~

~~(e) This chapter applies equally to for-profit and nonprofit provider entities.~~

~~(f) This chapter shall be the minimum requirement to be imposed upon any entity offering or providing continuing care, as set forth in this chapter.~~

~~(g) Because the authority to enter into continuing care contracts granted by the State Department of Social Services is neither a guarantee of performance by the providers nor an endorsement of contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.~~

~~(h) There is a need to define all of the following provisions:~~

~~(1) The types of continuing care contracts.~~

~~(2) Financial reserve requirements needed to fulfill continuing care contracts.~~

~~(3) The types of disclosures to be provided to residents concerning community operations.~~

SECTION 1. Section 1770 of the Health and Safety Code is amended to read:

1770. The Legislature finds, declares, and intends all of the following:

(a) Continuing care retirement communities are an alternative for the long-term residential, social, and health care needs of California's elderly residents, seek to provide a continuum of care, minimize transfer trauma, and allow ~~for provision of services to be provided~~ in an appropriately licensed setting.

(b) Because elderly residents often *both* expend a significant portion of their savings in order to purchase care in ~~the~~ *a continuing care* retirement community and, ~~thereby,~~ expect to receive care at ~~the~~ *their continuing care* retirement community for the rest of their lives, tragic consequences can result ~~from~~ *if* a continuing care provider ~~becoming~~ *becomes* insolvent or unable to provide responsible care.

(c) There is a need for disclosure concerning the terms of agreements made between prospective residents and the continuing care provider, and concerning the operations of the continuing care retirement community.

(d) Providers of continuing care should *be required to* obtain a certificate of authority to enter into continuing care contracts and *should* be monitored and regulated by the State Department of Social Services.

(e) This chapter applies equally to for-profit and nonprofit provider entities.

(f) This chapter ~~shall be~~ *states* the minimum ~~requirement~~ *requirements* to be imposed upon any entity offering or providing continuing care, ~~as set forth in this chapter.~~

(g) Because the authority to enter into continuing care contracts granted by the State Department of Social Services is neither a guarantee of performance by the providers nor an endorsement of *any continuing care* contract provisions, prospective residents must carefully consider the risks, benefits, and costs before signing a continuing care contract and should be encouraged to seek financial and legal advice before doing so.

SEC. 2. Section 1771 of the Health and Safety Code is amended to read:

1771. Unless the context otherwise requires, the definitions in this section govern the interpretation of this chapter.

(a) (1) “Affiliate” means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association, or other legal entity that directly or indirectly controls, is controlled by, or is under common control with, a provider or applicant.

(2) “Affinity group” means a grouping of ~~individuals~~ entities sharing a common interest, philosophy, or connection (e.g., military officers, religion).

~~(2)~~

(3) “Annual report” means ~~audited financial statements and reserve calculations (as required by Sections 1792.2 and 1793), with accompanying certified public accountant’s opinions thereon, resident lists, evidence of fidelity continuing care bond, and certification that the contract in use for new residents has been approved by the department, all to be submitted to the department by each provider annually, as required by the report required to be filed annually by each provider with the department, as described in Section 1790.~~

~~(3)~~

(4) “Applicant” means any entity, or combination of entities, that submits and has pending an application to the department for a permit to ~~sell deposit subscriptions~~ accept deposits and ~~certificates~~ a certificate of authority.

~~(4)~~

1 (5) “Assisted living” means assistance with personal
2 activities of daily living, including dressing, feeding,
3 toileting, bathing, grooming, mobility, and associated
4 tasks, to help provide for and maintain physical and
5 psychosocial comfort.

6 (6) “Assisted living unit” means the living area or unit
7 within a continuing care retirement community that is
8 specifically designed to provide ongoing assisted living.

9 (7) “Audited financial statement” means financial
10 statements prepared in accordance with generally
11 accepted accounting principles—~~and shall include~~
12 ~~including~~ the opinion of an independent certified public
13 ~~accountant; accountant,~~ and notes to the financial
14 statements considered customary or necessary to provide
15 full disclosure—~~or adequate understanding of the and~~
16 ~~complete information regarding the provider’s~~ financial
17 statements, financial condition, and operation.

18 (b) [reserved]

19 (c) (1) ~~“Cancellation”~~ “Cancel” means to destroy the
20 force and effect of an agreement or continuing care
21 contract, ~~by making or declaring it void or invalid.~~

22 (2) “Cancellation period” means the 90-day period,
23 beginning when the ~~transferor signs resident physically~~
24 ~~moves into the continuing care—contract retirement~~
25 ~~community, during which—time the resident—or—transferor~~
26 ~~may—revoke and~~ cancel the continuing care contract, as
27 provided in Section 1788.2.

28 (3) “Care” means nursing, medical, or other health
29 related services, protection or supervision, assistance
30 with the personal activities of daily living, or any
31 combination of those services.

32 (4) “Cash equivalent” means certificates of deposit
33 and United States treasury securities with a maturity of
34 five years or less. ~~Possession and control of any of these~~
35 ~~instruments shall be transferred to the escrow agent or~~
36 ~~depository at the time the deposit is paid.~~

37 (5) “Certificate” or “certificate of authority” means
38 the ~~written authorization from~~ certificate issued by the
39 department ~~for, properly executed and bearing the State~~
40 ~~Seal, authorizing~~ a specified provider to enter into one or

1 more continuing care contracts at a single specified
2 continuing care retirement community.

3 (6) “Condition” means a restriction ~~or required action~~
4 ~~placed on a provisional or final certificate of authority,~~
5 ~~specific action, or other requirement imposed by the~~
6 ~~department for the initial or continuing validity of a~~
7 ~~permit to accept deposits, a provisional certificate of~~
8 ~~authority, or certificate of authority.~~ A condition may
9 limit the circumstances under which the provider may
10 enter into any new *deposit agreement or contract*, or
11 may be *imposed as a condition precedent* to the issuance
12 of a ~~final permit to accept deposits, a provisional~~
13 ~~certificate of authority, or certificate of authority.~~

14 (7) “Consideration” means some right, interest, profit,
15 or benefit ~~accruing to one party, or paid, transferred,~~
16 ~~promised, or provided by one party to another as an~~
17 ~~inducement to contract.~~ Consideration includes some
18 forbearance, detriment, loss, or responsibility, *that is*
19 *given, suffered, or undertaken by the other a party as an*
20 *inducement to another party to contract.*

21 (8) “Continuing care contract” means a ~~written~~
22 ~~contract that includes a promise, expressed or implied, by~~
23 ~~a provider to provide one or more elements of care to an~~
24 ~~elderly resident for the duration of his or her life or for a~~
25 ~~term in excess of one year continuing care promise made,~~
26 ~~in exchange for the payment of an entrance fee, the~~
27 ~~payment of periodic charges, or both types of payments.~~
28 A continuing care contract may consist of one agreement
29 or a series of agreements and ~~may have~~ other writings
30 incorporated by reference. ~~—A life care contract, as~~
31 ~~defined in paragraph (1) of subdivision (l), is a type of~~
32 ~~continuing care contract.~~

33 (9) “Continuing care ~~contract~~ advisory committee”
34 means an advisory panel appointed pursuant to Section
35 1777.

36 (10) “Continuing care promise” means a promise,
37 *expressed or implied, by a provider to provide one or*
38 *more elements of care to an elderly resident for the*
39 *duration of his or her life or for a term in excess of one*
40 *year. Any such promise or representation, whether part*

1 of a continuing care contract, other agreement, or series
2 of agreements, or contained in any advertisement,
3 brochure, or other material, either written or oral, is a
4 continuing care promise.

5 (11) “Continuing care retirement community”
6 ~~(CCRC)~~ means a facility located within the State of
7 California where services promised in a continuing care
8 contract are provided. A distinct phase of development
9 approved by the department may be considered to be the
10 continuing care retirement community when a project is
11 being developed in successive—multiple distinct phases
12 over a period of time. When the services are provided in
13 a resident’s residents’ own—home homes, the homes into
14 which the provider takes those services—collectively are
15 considered part of the continuing care retirement
16 community.

17 ~~(11)~~

18 (12) “Control” means ~~the power to direct directing or~~
19 ~~cause causing~~ the direction of the financial management
20 ~~and or the~~ policies of another entity, including an
21 operator of a continuing care retirement community,
22 whether ~~through the~~ by means of the controlling entity’s
23 ownership of voting securities, by interest, contract, or
24 otherwise any other involvement. A parent entity or sole
25 corporate member of a corporation may exhibit control
26 of the operator of the member of an entity controls a
27 subsidiary entity provider for a continuing care
28 retirement community ~~through direct participation~~ if its
29 officers, directors, or agents directly participate in the
30 management of the subsidiary entity or in the initiation
31 or approval of policies ~~directly affecting~~ that affect the
32 continuing care retirement community’s operations,
33 including, but not limited to, ~~approval of~~ approving
34 budgets or ~~approval of~~ the administrator for a continuing
35 care retirement community administrator.

36 (d) (1) “Department” means the State Department
37 of Social Services.

38 (2) ~~“Deposit subscription”~~ “Deposit” means ~~a cash or~~
39 ~~cash equivalent payment~~ any transfer of consideration,
40 including a promise to transfer money or property, made

1 by a subscriber to an applicant and the escrow agent prior
2 to the release of escrow during development or
3 construction of a continuing care retirement community
4 a depositor to any entity that promises or proposes to
5 promise to provide continuing care, but is not authorized
6 to enter into a continuing care contract with the potential
7 depositor.

8 (3) “Deposit—subscription agreement” means—a
9 written contract in compliance with Section 1780.4
10 entered into between the transferor and applicant. This
11 agreement allows an applicant to accept deposit
12 subscriptions prior to the issuance of a provisional
13 certificate of authority any agreement made between
14 any entity accepting a deposit and a depositor. Deposit
15 agreements for deposits received by an applicant prior to
16 the department’s release of funds from the deposit
17 escrow account shall be subject to the requirements
18 described in Section 1780.4.

19 (4) “Depository” means a bank or institution that is a
20 member of the Federal Deposit Insurance Corporation or
21 a comparable—title deposit insurance program. —The
22 department’s approval of the depository shall be based, in
23 part, upon its capability to ensure the safety of funds and
24 properties entrusted to it and capable and willing to
25 perform the obligations of the depository pursuant to the
26 escrow agreement and this chapter. The depository may
27 be the same entity as the escrow agent.

28 (5) “Depositor” means any prospective resident who
29 pays a deposit. Where any portion of the consideration
30 transferred to an applicant as a deposit or to a provider
31 as consideration for a continuing care contract is
32 transferred by a person other than the prospective
33 resident or a resident, that third-party transferor shall
34 have the same cancellation or refund rights as the
35 prospective resident or resident for whose benefit the
36 consideration was transferred.

37 (6) “Director” means the Director of the—State
38 Department of Social Services.

39 (e) (1) “Elderly” means an individual who is 60 years
40 of age or older.

1 (2) “Entity” means ~~an organization or being that~~
2 ~~possesses separate existence for tax purposes individual,~~
3 ~~partnership, corporation, limited liability company, and~~
4 ~~any other form for doing business.~~ Entity includes a
5 person, sole proprietorship, estate, trust, association, and
6 joint venture, ~~partnership, or corporation.~~

7 (3) “Entrance fee” means ~~an~~ the sum of any initial,
8 amortized, or deferred transfer of consideration made or
9 promised to be made by, ~~or on behalf of,~~ a person
10 entering into a continuing care contract; for the purpose
11 of assuring care or related services pursuant to that
12 continuing care contract or as full or partial payment for
13 the promise to provide ~~one or more elements of~~ care for
14 the term of the continuing care contract. ~~An entrant~~
15 Entrance fee includes the purchase price of a
16 condominium, cooperative, or other interest sold in
17 connection with a promise of continuing care. ~~The~~
18 entrance fee may include a previously paid deposit
19 subscription, which is credited to the total entrance fee
20 due at the time the transferor signs the continuing care
21 contract. ~~An entrance fee initial, amortized, or deferred~~
22 transfer of consideration that is greater in value than 12
23 times the monthly care fee shall be presumed to ~~imply a~~
24 promise to provide care for more than one year. The term
25 “accommodation fee” may be synonymously used to
26 mean ~~an entrance fee~~ be an entrance fee.

27 (4) “Equity” means the ~~residual value of a business or~~
28 ~~real property beyond any mortgage or deed of trust~~
29 ~~thereon and liability therein~~ in excess of the aggregate
30 amount of all liabilities secured by the property.

31 (5) “Equity interest” means an interest held by a
32 resident in a continuing care retirement community that
33 consists of either an ownership interest in any part of the
34 continuing care retirement community property or a
35 transferable membership that entitles the holder to
36 reside at the continuing care retirement community.

37 (6) “Equity project” means a continuing care
38 ~~development project in which the transferors are given~~
39 retirement community where residents receive an equity
40 interest in the continuing care retirement community

1 ~~property or in a transferable membership in a resident's~~
2 ~~association.~~

3 ~~(6)~~

4 (7) "Escrow agent" means a bank or institution,
5 including, but not limited to, a title insurance company,
6 approved by the department ~~as capable of ensuring the~~
7 ~~safety of the funds and properties entrusted to it and~~
8 ~~capable and willing to perform the terms of the escrow~~
9 ~~pursuant to the escrow agreement and this chapter to~~
10 ~~hold and render accountings for deposits of cash or cash~~
11 ~~equivalents.~~

12 (f) "Facility" means any place or accommodation ~~in~~
13 ~~which where~~ a provider ~~undertakes to provide~~ *provides*
14 *or will provide* a resident with care or related services,
15 whether or not the place or accommodation is
16 constructed, owned, leased, rented, or otherwise
17 contracted for by the provider.

18 (g) (reserved)

19 (h) (reserved)

20 (i) "Inactive certificate of authority" means a
21 certificate that has been ~~declared inactive~~ *terminated*
22 under Section 1793.8 ~~and renders its holder no longer~~
23 ~~authorized to enter into continuing care contracts, but~~
24 ~~still contractually obligated to continuing care residents~~
25 ~~and statutory compliance requirements.~~

26 (j) (reserved)

27 (k) (reserved)

28 (l) ~~(1)~~ "Life care contract" means a continuing care
29 contract that includes a promise, expressed or implied, by
30 a provider to provide *or pay for* routine services at all
31 levels of care, including acute care and the services of
32 physicians and surgeons, *to the extent not covered by*
33 *other public or private insurance benefits*, to a resident
34 for the duration of his or her life. Care shall be provided
35 *under a life care contract* in a continuing care retirement
36 community having a comprehensive continuum of care,
37 including a skilled nursing facility, under the ownership
38 and supervision of the provider on or adjacent to the
39 premises. ~~In a life care contract, no~~ *No change is may be*
40 *made in the monthly fee based on level of service care.*

1 A life care contract shall also include provisions to
2 subsidize residents who become financially unable to pay
3 their monthly care fees.

4 ~~(2) “Life lease” means a landlord tenant relationship~~
5 ~~in which the tenant obtains only the right to possess a~~
6 ~~defined living unit for life. In a life lease there is no~~
7 ~~obligation or intent to provide care and services to the~~
8 ~~tenant at any time, present or future.~~

9 (m) (1) “Monthly care fee” means the ~~monthly~~
10 ~~charge fee charged to a resident in a continuing care~~
11 ~~contract on a monthly or other periodic basis for current~~
12 ~~accommodations and services rendered, including care,~~
13 ~~board, or lodging, and any other periodic charges to the~~
14 ~~resident, determined on a monthly or other recurring~~
15 ~~basis, pursuant to the provisions of a continuing care~~
16 ~~contract. Monthly care fees are exclusive of periodic~~
17 ~~including care, board, or lodging. Periodic entrance fee~~
18 ~~payments or other prepayments shall not be monthly~~
19 ~~care fees.~~

20 (2) “Monthly fee contract” means a continuing care
21 contract that ~~provides by its terms for the monthly~~
22 ~~payment of a fee for accommodations and services~~
23 ~~rendered requires residents to pay monthly care fees.~~

24 (n) “Nonambulatory person” means a person who is
25 unable to leave a building unassisted under emergency
26 conditions, ~~as in the manner described by Section 13131.~~

27 (o) (reserved)

28 (p) (1) “Per capita cost” means a continuing care
29 retirement community’s operating expenses, excluding
30 depreciation, divided by the average number of
31 residents.

32 (2) “Periodic charges” means fees paid by a resident
33 on a periodic basis.

34 (3) ~~“Permit to sell deposit subscriptions” accept~~
35 ~~deposits”~~ means a written authorization by the
36 department ~~for permitting~~ an applicant to enter into ~~one~~
37 ~~or more deposit subscription agreements at regarding a~~
38 ~~single specified location continuing care retirement~~
39 ~~community.~~

1 ~~(3) “Personal care” means assistance with personal~~
2 ~~activities of daily living, including dressing, feeding,~~
3 ~~toileting, bathing, grooming, mobility, and associated~~
4 ~~tasks, to help provide for and maintain physical and~~
5 ~~psychosocial comfort.~~

6 ~~(4) “Personal care unit” means the living unit within~~
7 ~~a physical area of a continuing care retirement~~
8 ~~community specifically designed to provide ongoing~~
9 ~~personal care. A personal care unit is synonymous with an~~
10 ~~assisted living unit.~~

11 ~~(5)–~~

12 ~~(4) “Prepaid contract” means a continuing care~~
13 ~~contract in which the monthly care fee, if any, may not~~
14 ~~be adjusted to cover the actual cost of care and services.~~

15 ~~(5) “Preferred access” means that residents who have~~
16 ~~previously occupied a residential living unit have a right~~
17 ~~over other persons to any assisted living or skilled nursing~~
18 ~~beds that are available at the community.~~

19 ~~(6) “Processing fee” means a payment—by—the~~
20 ~~transferor to cover administrative costs of processing the~~
21 ~~application of a—subscriber depositor or prospective~~
22 ~~resident.~~

23 ~~(7) “Promise to provide one or more elements of~~
24 ~~care” means any expressed or implied representation~~
25 ~~that one or more elements of care will be provided or will~~
26 ~~be available, such as by preferred access,—whether—the~~
27 ~~representation is part of a continuing care contract, other~~
28 ~~agreement, or series of agreements, or is contained in any~~
29 ~~advertisement, brochure, or other material, either~~
30 ~~written or oral.~~

31 ~~(8) “Proposes” means a representation that an~~
32 ~~applicant or provider—plans will or intends to make a~~
33 ~~future promise to provide care,—which may be including~~
34 ~~a promise that is subject to—the happening of certain~~
35 ~~events, a condition, such as the construction of a~~
36 ~~continuing care retirement community—construction or~~
37 ~~obtaining the acquisition of a certificate of authority.~~

38 ~~(9) (A) “Provider” means an any entity that provides;~~
39 ~~promises to provide; continuing care, makes a continuing~~
40 ~~care promise, or proposes to promise to provide,—care for~~

1 ~~life or for more than one year continuing care.~~

2 ~~“Provider” includes~~

3 (B) ~~“Provider” also means any entity that controls the~~
4 ~~an entity that promises care as determined by the~~
5 ~~department. A described in subparagraph (A). The~~
6 ~~department shall determine whether an entity controls~~
7 ~~another entity for purposes of this article.~~

8 (C) ~~“Provider” shall not include a homeowner’s~~
9 ~~association, cooperative, or condominium association shall~~
10 ~~not may be a provider.~~

11 (10) ~~“Provisional certificate of authority” means~~
12 ~~written authorization the certificate issued by the~~
13 ~~department that allows the provider to enter into~~
14 ~~continuing care contracts. This provisional certificate is~~
15 ~~issued after the conditions defined in Section 1786 have~~
16 ~~been met and is issued for a term specified by subdivision~~
17 ~~(b) of, properly executed and bearing the State Seal,~~
18 ~~under Section 1786. A provisional certificate of authority~~
19 ~~shall be limited to the specific continuing care retirement~~
20 ~~community and number of units identified in the~~
21 ~~applicant’s application.~~

22 (q) (reserved)

23 (r) (1) ~~“Refundable “Refund reserve” means the~~
24 ~~amount calculated to ensure the availability of funds for~~
25 ~~specified refunds of entrance fees reserve a provider is~~
26 ~~required to maintain, pursuant to Section 1793.~~

27 (2) ~~“Refundable contract” means a continuing care~~
28 ~~contract form that includes promises a promise,~~
29 ~~expressed or implied, by the provider to pay refunds of~~
30 ~~an entrance fees fee refund or to repurchase the~~
31 ~~transferor’s unit, membership, stock, or other interest in~~
32 ~~the continuing care retirement community when the~~
33 ~~specified refund right is not fully amortized by the end of~~
34 ~~the sixth year of residency. A lump sum payment to a~~
35 ~~resident after termination of a continuing care contract~~
36 ~~that is conditioned upon resale of a unit shall not be~~
37 ~~considered a refund and shall not be advertised as a~~
38 ~~refund promise to refund some or all of the initial~~
39 ~~entrance fee extends beyond the resident’s sixth year of~~
40 ~~residency. Providers that enter into refundable contracts~~

1 shall be subject to the refund reserve requirements of
2 Section 1793. A continuing care contract that includes a
3 promise to repay all or a portion of an entrance fee that
4 is conditioned upon reoccupancy or resale of the unit
5 previously occupied by the resident, shall not be
6 considered a refundable contract for purposes of the
7 refund reserve requirements of Section 1793, provided
8 that this conditional promise of repayment is not referred
9 to by the applicant or provider as a “refund.”

10 (3) “Resale fee” means a levy by the provider against
11 the proceeds from the sale of a transferor’s equity
12 interest.

13 (4) “Reservation fee” ~~means cash received by an~~
14 ~~applicant from an interested individual during a market~~
15 ~~test feasibility study that complies with subdivision (b) of~~
16 ~~Section 1771.6~~ refers to consideration collected by an
17 entity that has made a continuing care promise or is
18 proposing to make this promise and has complied with
19 Section 1771.4.

20 ~~(4)–~~

21 (5) “Resident” means a person who enters into a
22 continuing care contract with a provider, or who is
23 designated in a continuing care contract to be a person
24 being provided or to be provided services, including care,
25 board, or lodging.

26 ~~(5)–~~

27 (6) “Residential care facility for the elderly” means a
28 housing arrangement as defined by Section 1569.2.

29 ~~(6)–~~

30 (7) “Residential living unit” means a living unit in a
31 continuing care retirement community that is ~~included~~
32 ~~in the residential care facility for the elderly license~~
33 ~~capacity, but not used exclusively for personal care~~
34 assisted living or nursing services.

35 (s) “Subscriber” ~~means a person who has applied to be~~
36 ~~a resident in a continuing care retirement community~~
37 ~~under development or construction, and who has entered~~
38 ~~into a deposit subscription agreement. (reserve)~~

(t) (1) “Termination” means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

~~(2) “Transfer” means conveyance of a right, title, or interest.~~

~~(3) “Transfer fee” means a levy by the provider against the proceeds from the sale of a transferor’s equity interest.~~

~~(4) “Transfer trauma” means death, depression, or regressive behavior, that is caused by the abrupt and involuntary transfer of an elderly resident from one home to another, resulting in and results from a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and or the major loss of visits from friends and relatives who may be unable to reach the new facility.~~

~~(5)–~~

(3) “Transferor” means a person who transfers, or promises to transfer ~~a sum of money or property for the purpose of assuring, consideration in exchange for care or and~~ related services pursuant to under a continuing care contract, ~~whether or proposed continuing care contract,~~ for the benefit of the transferor or another.

SEC. 3. Section 1771.2 of the Health and Safety Code is amended to read:

1771.2. (a) ~~No entity proposing to promise to provide care shall~~ An entity shall be required to apply for and hold a currently valid permit to accept deposits before it may enter into a deposit subscription agreement or ~~sell accept~~ a deposit subscription unless the entity has applied for and received a current and valid permit to sell deposit subscriptions.

(b) ~~No continuing care contract shall be executed, unless the provider has a current and~~ A provider shall hold a currently valid provisional certificate of authority or final certificate of authority before it may enter into a continuing care contract.

(c) ~~If~~ Before a provider subcontracts or assigns to another entity the responsibility to provide continuing

1 care, that other entity shall have a current and valid
2 certificate of authority. ~~The~~ A provider holding a
3 certificate of authority may contract for the provision of
4 a particular aspect of continuing care, such as medical
5 care, with another entity that does not possess a
6 certificate of authority, if that other entity is
7 appropriately licensed under laws of this state to provide
8 that care, and ~~that care is the provider has not paid in~~
9 ~~advance for more than one year in advance for that care.~~

10 (d) If an entity enters into an agreement to provide
11 care for life or for more than one year to a person under
12 60 years of age in return for ~~payment of an entrance fee~~
13 ~~or periodic charges~~ consideration, and the agreement
14 includes the provision of services to that person after age
15 60, ~~when the person turns 60 years of age, the promising~~
16 ~~entity shall either terminate the continuing care contract~~
17 ~~or meet shall comply with all the requirements of~~
18 ~~imposed by this chapter when the first such person turns~~
19 ~~60 years of age.~~

20 ~~(e) Homeowner's associations, cooperatives, or~~
21 ~~condominium associations shall not be providers.~~

22 SEC. 4. Section 1771.3 is added to the Health and
23 Safety Code, to read:

24 1771.3. (a) This chapter shall not apply to either of
25 the following:

26 (1) An arrangement for the care of a person by a
27 relative.

28 (2) An arrangement for the care of a person or persons
29 from only one family by a friend.

30 (b) This chapter shall not apply to any admission or
31 residence agreements offered by residential
32 communities for the elderly or residential care facilities
33 for the elderly that promise residents preferred access to
34 assisted living or nursing care, when all of the following
35 conditions exist:

36 (1) Residents pay on a fee-for-service basis for
37 available assisted living and nursing care.

38 (2) The fees paid for available assisted living and
39 nursing care are the same for residents who have
40 previously occupied a residential living unit as for

1 residents who have not previously occupied a residential
2 living unit.

3 (3) No entrance fee or prepayment for future care or
4 access, other than monthly care fees, is paid by, or
5 charged to, any resident at the community or facility. For
6 purposes of this paragraph, the term entrance fee shall
7 not include initial, deferred, or amortized payments that
8 cumulatively do not exceed seven thousand five hundred
9 dollars (\$7,500).

10 (4) The provider has not made a continuing care
11 promise, other than a promise as described in paragraph
12 (5).

13 (5) (A) The admission or residence agreement states:

14 “This agreement does not guarantee that an assisted
15 living or nursing bed will be available for residents, but,
16 instead, promises preferred access to any assisted living
17 or nursing beds that are available at the community or
18 facility. The promise of preferred access gives residents
19 who have previously occupied a residential living unit a
20 right over other persons to such beds.”

21 “A continuing care contract promises that care will be
22 provided to residents for life or for a term in excess of a
23 year. (Name of community or facility) is not a continuing
24 care retirement community and (name of provider) does
25 not hold a certificate of authority to enter into continuing
26 care contracts and is not required to have the same fiscal
27 reserves as a continuing care provider. This agreement is
28 not a continuing care contract and is exempted from the
29 continuing care statutes under subdivision (b) of Section
30 1771.3 of the Health and Safety Code so long as the
31 conditions set forth in that section are met.”

32 (B) The admission or residence agreement shall also
33 contain the policies and procedures regarding transfers to
34 higher levels of care within the community or facility.

35 (c) (1) Any entity may apply to the department for a
36 Letter of Exemption pursuant to subdivision (b). The
37 application for exemption shall state that the requesting
38 entity satisfies the requirements for an exemption under
39 this section.

1 (2) An application to the department for a Letter of
2 Exemption shall be required to include all of the
3 following:

4 (A) A nonrefundable one thousand dollar (\$1,000)
5 application fee.

6 (B) The name and business address of the applicant.

7 (C) A description of the services and care available or
8 provided to residents of the community or facility.

9 (D) Documentation establishing that the requesting
10 entity satisfies the requirements for an exemption under
11 subdivision (b), including all of the following:

12 (i) A schedule showing all fees for assisted living and
13 skilled nursing care charged to residents at the facility or
14 community who have previously occupied a residential
15 living unit.

16 (ii) A schedule showing all fees for assisted living and
17 skilled nursing care charged to residents at the facility or
18 community who have not previously occupied a
19 residential living unit.

20 (iii) A description of the differences between the fees
21 for assisted living and skilled nursing care charged to
22 residents who have previously occupied a residential unit
23 and the fees for assisted living and skilled nursing care
24 charged to residents who have not previously occupied a
25 residential unit.

26 (iv) A schedule showing any other fees charged to
27 residents of the community or facility.

28 (v) Copies of all admission and residence agreement
29 forms that have been entered into, or will be entered into,
30 with residents at the community or facility.

31 (vi) Any other information reasonably requested by
32 the department.

33 (d) The department shall issue a Letter of Exemption
34 pursuant to subdivision (c) to a requesting entity if the
35 department determines that either of the following
36 conditions are met:

37 (1) The requesting entity satisfies each of the
38 requirements for an exemption under subdivision (b).

39 (2) The requesting entity satisfies each of the
40 requirements for an exemption under subdivision (b)

1 other than the requirements of paragraph (2) of
2 subdivision (b), and there is no substantial difference
3 between the fees for available assisted living and skilled
4 nursing care paid by residents who have previously
5 occupied a residential living unit, and the fees for
6 available assisted living and skilled nursing care paid by
7 residents who have previously occupied a residential
8 living unit.

9 (e) If, at any time, a provider that has received a
10 Letter of Exemption pursuant to subdivision (c) no
11 longer meets any of the requirements for that exemption,
12 the requirements of this chapter shall apply, and the
13 department may impose appropriate remedies and
14 penalties as set forth in Article 7 (commencing with
15 Section 1793.5).

16 SEC. 5. Section 1771.4 of the Health and Safety Code
17 is repealed.

18 ~~1771.4. Any entity which promises to provide care for~~
19 ~~life or for more than one year in return for payment of an~~
20 ~~entrance fee or periodic charges from, or on behalf of, a~~
21 ~~person 60 years of age or older shall first obtain written~~
22 ~~licenses for the entire continuing care retirement~~
23 ~~community pursuant to Chapter 3.2 (commencing with~~
24 ~~Section 1569), including residential living and personal~~
25 ~~care units, and Chapter 2 (commencing with Section~~
26 ~~1250) if a skilled nursing facility is on the premises.~~

27 SEC. 6. Section 1771.4 is added to the Health and
28 Safety Code, to read:

29 1771.4. (a) An entity may conduct a market test for
30 a proposed continuing care retirement community and
31 collect reservation fees from persons interested in
32 residing at the proposed continuing care retirement
33 community without violating this chapter if all of the
34 following conditions are met:

35 (1) The entity has filed with the department an
36 application for a permit to accept deposits and for a
37 certificate of authority for the project.

38 (2) The entity's application includes the proposed
39 reservation agreement form and a proposed escrow
40 agreement that provides all of the following:

1 (A) All fees shall be deposited in escrow.

2 (B) Refunds shall be made within 10 calendar days
3 after the proposed resident's request or 10 days after
4 denial of the application for a permit to accept deposits.

5 (C) All fees shall be converted to deposits within 15
6 days after a permit to accept deposits is issued.

7 (3) The department has acknowledged in writing its
8 receipt of the entity's application and its approval of the
9 entity's proposed reservation agreement between the
10 payer and the entity and the escrow agreement between
11 the escrow holder and the entity.

12 (4) The amount of any reservation fee collected by the
13 entity does not exceed one thousand dollars (\$1,000) or 1
14 percent of the average entrance fee amount as
15 determined from the entity's application, whichever is
16 greater.

17 (5) All reservation fees collected by the entity are
18 placed into an escrow under the terms of the approved
19 reservation agreement and escrow agreement.

20 (6) The reservation agreement and escrow agreement
21 provide that the payer shall be entitled to a refund within
22 10 calendar days after making a request for a refund and
23 within 10 calendar days after any denial of the entity's
24 application for a permit to accept deposits.

25 (7) The reservation agreement and escrow agreement
26 provide that the payer's reservation fee shall be
27 converted into a deposit within 15 days after the entity's
28 permit to accept deposits is issued.

29 SEC. 7. Section 1771.5 of the Health and Safety Code
30 is repealed.

31 ~~1771.5. (a) No resident of any continuing care~~
32 ~~retirement community shall be deprived of any civil or~~
33 ~~legal right, benefits, or privileges guaranteed by law, by~~
34 ~~the California Constitution, or by the United States~~
35 ~~Constitution solely by reason of status as a resident of a~~
36 ~~community. In addition, because of the discretely~~
37 ~~different character of condominium and independent~~
38 ~~living programs that are a part of a continuing care~~
39 ~~retirement community, this section shall augment~~
40 ~~Chapter 3.9 (commencing with Section 1599), Section~~

~~73523 of the California Code of Regulations, and~~
~~applicable federal law and regulations. All residents in~~
~~independent living programs have all of the following~~
~~rights:~~

~~(1) To live in an attractive, safe, and well maintained~~
~~physical environment.~~

~~(2) To live in an environment that enhances personal~~
~~dignity, maintains independence, and encourages~~
~~self-determination.~~

~~(3) To participate in activities that meet individual~~
~~physical, intellectual, social, and spiritual needs.~~

~~(4) To expect effective channels of communication~~
~~between residents and staff, and between residents and~~
~~the administration or board of directors.~~

~~(5) To receive a clear and complete written contract~~
~~that establishes the mutual rights and obligations of the~~
~~resident and the continuing care retirement community.~~

~~(6) To maintain and establish ties to the local~~
~~community.~~

~~(b) A continuing care retirement community shall~~
~~maintain an environment that enhances the residents'~~
~~self-determination and independence. The provider~~
~~shall:~~

~~(1) Permit the formation of a resident council by~~
~~interested residents, provide space and post notices for~~
~~meetings, and provide assistance in attending meetings~~
~~for those residents who request it. In order to permit a~~
~~free exchange of ideas, at least part of each meeting shall~~
~~be conducted without the presence of any continuing~~
~~care retirement community personnel. The council may,~~
~~among other things, make recommendations to~~
~~management regarding resident issues which impact~~
~~their quality of life. Proper notice shall be provided of all~~
~~council meetings and the meetings shall be open to all~~
~~residents to attend as well as present issues when~~
~~prearranged with the council president. Executive~~
~~sessions of the council shall be for attendance only by~~
~~council members.~~

~~(2) Establish policies and procedures that promote the~~
~~sharing of information, dialogue between residents and~~

~~management and access to the board of directors or general partners. The policies and procedures shall be evaluated at a minimum of every two years by the continuing care retirement community administration to determine their effectiveness in maintaining meaningful resident/management relations.~~

~~(e) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities or skilled nursing facilities, the provider shall provide a copy of the bill of rights provided for by this section to each resident at or before the resident's admission to the community.~~

~~(d) The department may, upon receiving a complaint relative to this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Contract Committee for determination of compliance.~~

~~(e) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional or final certificate of authority pursuant to Section 1793.21.~~

SEC. 8. Section 1771.5 is added to the Health and Safety Code, to read:

1771.5. The department shall not issue a provisional certificate of authority or a certificate of authority to an applicant until the applicant has obtained licenses for the entire continuing care retirement community, including a license to operate the residential living and assisted living units, pursuant to Chapter 3.2 (commencing with Section 1569) and if a skilled nursing facility is on the premises, a license for the facility pursuant to Chapter 2 (commencing with Section 1250).

SEC. 9. Section 1771.6 of the Health and Safety Code is repealed.

~~1771.6. (a) This chapter does not apply to any of the following:~~

~~(1) Any arrangement for the care of a person by a relative.~~

~~(2) Any arrangement for the care of a person or persons from only one family by a friend.~~

~~(b) Any market test feasibility study during which reservation fees are being collected shall not be considered to be a violation of this chapter, provided that all of the following have occurred:~~

~~(1) An application for a permit to sell deposit subscriptions and a certificate of authority for the project has been filed with, and the receipt has been acknowledged in writing by, the department.~~

~~(2) The amount of each reservation fee does not exceed 1 percent of the average entrance fee.~~

~~(3) The reservation fee is placed in escrow.~~

~~(4) The escrow agreement provides for a refund within 10 calendar days after the request of a potential resident or within 10 calendar days after denial of the application for the permit to sell deposit subscriptions.~~

~~(5) The escrow agreement provides for the conversion of the reservation fee to a deposit subscription when a permit to sell deposit subscriptions is issued.~~

SEC. 10. Section 1771.6 is added to the Health and Safety Code, to read:

1771.6. (a) Any entity may apply to the department for a Letter of Nonapplicability for reasons other than those specified in Section 1771.3, which states that the provisions of this chapter do not apply to its community, project, or proposed project.

(b) Applications for Letters of Nonapplicability shall be made to the department in writing and include the following:

(1) A nonrefundable one thousand dollar (\$1,000) application fee.

(2) A list of the reasons why the existing or proposed project may not be subject to this chapter.

(3) A copy of the existing or proposed contract between the entity and residents.

(4) Copies of all advertising material.

(5) Any other information reasonably requested by the department.

1 (c) The department shall within seven calendar days
2 after receipt of the request for a Letter of
3 Nonapplicability, acknowledge receipt of the request.
4 The department shall within 30 calendar days after all
5 materials are received in support of the request, either
6 issue the Letter of Nonapplicability, or notify the entity
7 of the department's reasons for denial of the request.

8 (d) If the department determines that the entity does
9 not qualify for a Letter of Nonapplicability, the entity
10 shall refrain from, or immediately cease, entering into
11 continuing care contracts. If an entity to which this
12 subdivision applies intends to provide continuing care, an
13 application for a certificate of authority shall be required
14 to be filed with the department pursuant to this chapter.
15 If the entity to which this subdivision applies does not
16 intend to provide continuing care, it shall alter its plan of
17 operation so that the project is not subject to this chapter.
18 To obtain a Letter of Nonapplicability for the revised
19 project, the entity shall submit a new application and fee.

20 SEC. 11. Section 1771.7 of the Health and Safety Code
21 is repealed.

22 ~~1771.7. (a) The department may issue a limited~~
23 ~~certificate of authority to any equity project constructed~~
24 ~~and occupied prior to January 1, 1987, and offering a care~~
25 ~~program in connection with the sale of residential units.~~
26 ~~The department may specify any limitations on this~~
27 ~~certificate of authority at the time of its issuance.~~

28 ~~(b) To qualify for a limited certificate of authority, an~~
29 ~~equity project shall file an application with the~~
30 ~~department pursuant to Section 1779.2. The application~~
31 ~~also shall include all of the following:~~

32 ~~(1) A Letter of Non-applicability, written to the~~
33 ~~project by the department prior to January 1, 1987,~~
34 ~~declaring the life care laws to be inapplicable to the~~
35 ~~project.~~

36 ~~(2) A detailed description of the program,~~
37 ~~demonstrating that the program has not changed since~~
38 ~~the date of the Letter of Non-applicability.~~

~~(3) The project's continuing care contract that has been modified to disclose the limitations imposed on the limited certificate of authority.~~

~~(e) An application under this section shall be exempt from the requirement of the application fee specified in subdivision (d) of Section 1779.2.~~

SEC. 12. Section 1771.7 is added to the Health and Safety Code, to read:

1771.7. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefits, or privileges guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of Title 22 of the California Code of Regulations, and applicable federal law and regulations.

(b) All residents in residential living units shall have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the provider.

(6) To maintain and establish ties to the local community.

(c) A provider shall maintain an environment that enhances the residents' self-determination and independence. The provider shall permit the formation

1 of a resident association by interested residents, who may
 2 elect a governing body. The provider shall permit the
 3 association to have space and post notices for meetings.
 4 The provider shall provide assistance in attending
 5 meetings for those resident, who request it. In order to
 6 permit a free exchange of ideas, at least part of each
 7 meeting shall be conducted without the presence of any
 8 provider personnel. The association may, among other
 9 things, make recommendations to management
 10 regarding resident issues that impact their quality of life.
 11 Meetings shall be open to all residents, and all residents
 12 may present issues. Executive sessions of the association's
 13 governing body shall be attended only by the governing
 14 body.

15 (d) A continuing care retirement provider shall
 16 establish policies and procedures that promote the
 17 sharing of information, dialogue between residents and
 18 management, and access to the provider's governing
 19 body. The policies and procedures shall be evaluated, at
 20 a minimum, every two years by the provider to
 21 determine their effectiveness in maintaining meaningful
 22 resident/management relations.

23 (e) Failure to comply with this section shall be grounds
 24 for suspension, condition, or revocation of the provisional
 25 certificate of authority or certificate of authority pursuant
 26 to Section 1793.21.

27 SEC. 13. Section 1771.8 of the Health and Safety Code
 28 is repealed.

29 ~~1771.8. (a) Any entity which believes its project is not~~
 30 ~~subject to this chapter or which is contemplating a project~~
 31 ~~which it believes may not be subject to this chapter, may~~
 32 ~~apply to the department for a Letter of Non-applicability.~~

33 ~~(b) Applications for Letters of Non-applicability shall~~
 34 ~~be made to the department in writing and include the~~
 35 ~~following:~~

36 ~~(1) A nonrefundable one thousand dollar (\$1,000)~~
 37 ~~application fee.~~

38 ~~(2) A list of the reasons why the existing or proposed~~
 39 ~~project may be exempt.~~

~~(3) A copy of the existing or proposed contract between the entity and residents.~~

~~(4) Copies of all advertising material.~~

~~(5) Any other reasonable information requested by the department.~~

~~(e) The department shall follow these timelines in reviewing requests for Letters of Non-applicability:~~

~~(1) Within seven calendar days, the department shall acknowledge receipt of the request.~~

~~(2) Within 30 calendar days after all materials are received, the department shall either issue the Letter of Non-applicability, or notify the entity of the department's reasons for denial of the request.~~

~~(d) If the department determines that the entity does not qualify for a Letter of Non-applicability, the entity shall refrain from or immediately cease entering into continuing care contracts.~~

~~(1) If the entity intends to provide continuing care, an application for a certificate of authority shall be filed with the department pursuant to this chapter.~~

~~(2) If the entity does not intend to provide continuing care, it shall alter its plan of operation so that the project is not subject to this chapter and submit a new application and fee for a Letter of Non-applicability.~~

SEC. 14. Section 1771.9 of the Health and Safety Code is amended and renumbered to read:

~~1771.9.—~~

~~1771.8. (a) (1) The Legislature finds and declares all of the following:~~

~~(A)—~~

~~(1) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.~~

~~(B)—~~

~~(2) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.~~

~~(C)—~~

(3) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

~~(2)–~~

(b) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

~~(A)–~~

(1) Encouraging residents to form a resident ~~council~~ *association*, and assisting the residents, ~~the resident council~~ *association*, and ~~resident association~~ *its governing body* to keep informed about the operation of the *continuing care retirement community*.

~~(B)–~~

(2) Encouraging residents of a *continuing care retirement community* or their elected representatives to select residents to participate as board members *of the governing body* of the provider.

~~(C)–~~

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the *continuing care retirement community*.

~~(b)–~~

(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or a ~~committee of residents~~ *the resident association or its governing body*, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the *continuing care retirement community* and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

~~(e)–~~

(d) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated

1 representative of the provider shall convene a meeting,
2 to which all residents shall be invited, for the purpose of
3 discussing the reasons for the increase, the basis for
4 determining the amount of the increase, and the data
5 used for calculating the increase. This meeting may
6 coincide with the semiannual meetings provided for in
7 subdivision ~~(b)~~ (c).

8 ~~(d) Residents~~

9 *(e) The governing body of a provider, or the*
10 *designated representative of the provider shall be*
11 ~~provided~~ *provide residents with at least 14 days' advance*
12 *notice of each meeting provided for in subdivisions* ~~(b)~~
13 *(c) and* ~~(e)~~ *(d). The governing body of a provider, or the*
14 *designated representative of the provider shall post the*
15 *notice of, and the agenda for, the meeting shall be posted*
16 *in a conspicuous place in the community at least 14 days*
17 *prior to the meeting. The agenda and accompanying*
18 ~~materials shall be~~ *governing body of a provider, or the*
19 *designated representative of the provider shall make*
20 *available to residents of the continuing care retirement*
21 *community upon request the agenda and accompanying*
22 *materials at least seven days prior to the meeting.*

23 ~~(e)~~

24 *(f) Each provider shall make available to the resident*
25 ~~council~~ *association or its governing body, or if neither*
26 *exists, if any, or to a committee of residents, a financial*
27 *statement of activities comparing actual costs to*
28 *budgeted costs broken down by expense category, not*
29 *less than semiannually, and shall consult with the resident*
30 ~~council, if any, or,~~ *association or its governing body, or if*
31 *neither exists to a committee of residents, during the*
32 *annual budget planning process.*

33 ~~(f)~~

34 *(g) Each provider shall, within 10 days after the annual*
35 *report required pursuant to Section 1790 is submitted to*
36 *the department, provide, at a central and conspicuous*
37 *location in the community, a copy of the annual report,*
38 *including a copy of the annual audited financial*
39 *statement, but excluding personal confidential*
40 *information.*

~~(g)~~

(h) Each provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the board of director's meetings and shall retain these records for at least three years from the date the records were filed or issued.

~~(h)-(1)~~

(i) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

~~(2)~~

(j) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates.

~~(i)-(1)~~

(k) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision ~~(h)~~ (i) to participate as a resident representative to the provider's governing body may, at the option of the resident—~~council~~—or association, be selected in any one of the following ways:

~~(A)~~

1 (1) By a majority vote of the ~~resident council or~~
2 resident association of a provider or by a majority vote of
3 a resident-elected committee of residents of a
4 multifacility organization.

5 ~~(B)–~~

6 (2) If no ~~resident council or~~ resident association exists,
7 any resident may organize a meeting of the majority of
8 the residents of the *continuing care retirement*
9 community to select or nominate residents to represent
10 them before the governing body.

11 ~~(C)–~~

12 (3) Any other method designated by the ~~resident~~
13 ~~council or~~ resident association.

14 ~~(2)–~~

15 (1) The ~~residents' council,~~ *resident* association, or
16 organizing resident, or in the case of a multifacility
17 organization, the resident-elected committee of
18 residents, shall give residents of the *continuing care*
19 *retirement* community at least 30 days' advance notice of
20 the meeting to select a resident representative and shall
21 post the notice in a conspicuous place at the *continuing*
22 *care retirement* community.

23 ~~(j)–~~

24 (m) Except as provided in subdivision ~~(k)~~ (n), the
25 resident representative shall receive the same notice of
26 board meetings, board packets, minutes, and other
27 materials as members and shall be permitted to attend,
28 speak, and participate in all meetings of the board.

29 ~~(k)–~~

30 (n) Notwithstanding subdivision ~~(j)~~ (m), the
31 governing body may exclude resident representatives
32 from its executive sessions and from receiving board
33 materials to be discussed during executive session.
34 However, resident representatives shall be included in
35 executive sessions and shall receive all board materials to
36 be discussed during executive sessions related to
37 discussions of the annual budgets, increases in monthly
38 care fees, indebtedness, and expansion of new and
39 existing ~~facilities~~ *continuing care retirement*
40 *communities*.

~~(t)~~

(o) The provider shall pay all reasonable travel costs for the resident representative.

~~(m)~~

(p) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

~~(n)~~

(q) Nothing in this section ~~shall prohibit~~ prohibits a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

~~(o)~~

(r) On or before January 1, 2001, the Continuing Care Contracts Advisory Committee of the department established pursuant to Section 1777 shall evaluate and report to the Legislature on the implementation of this section.

SEC. 15. Section 1771.11 of the Health and Safety Code is amended and renumbered to read:

~~1771.11.—~~

1771.10. Each provider shall adopt a comprehensive disaster preparedness plan specifying policies for evacuation, relocation, continued services, reconstruction, organizational structure, insurance coverage, resident education, and plant replacement.

SEC. 16. Section 1772 of the Health and Safety Code is amended to read:

1772. (a) ~~Except as otherwise provided in paragraph (5) of subdivision (a) of Section 1788, no~~ No report, circular, public announcement, certificate, financial statement, or any other printed matter or advertising material, or oral representation, that states or implies that ~~any~~ an entity sponsors, guarantees, or ~~assures~~ ensures the performance of any continuing care contract, shall be published or presented to any prospective resident unless

~~1 the entity files with the department a written and legally~~
~~2 sufficient document of acceptance of full financial~~
~~3 responsibility for each continuing care contract. Each~~
~~4 entity shall be listed as a provider on the certificate of~~
~~5 authority and shall be cosigner on the continuing care~~
~~6 contracts. both of the following have been met:~~

7 (1) Paragraph (5) of subdivision (a) of Section 1788
8 applies and the requirements of that paragraph have
9 been satisfied.

10 (2) The entity files with the department a duly
11 authorized and executed written declaration that it
12 accepts full financial responsibility for each continuing
13 care contract. The filing entity shall be subject to the
14 application requirements set forth in Article 2
15 (commencing with Section 1779), shall be a coobligor for
16 the subject contracts, and shall be a coprovider on the
17 applicable provisional certificate of authority and
18 certificate of authority.

19 (b) Implied sponsorship includes the use of the entity's
20 name of an entity for the purpose of implying that the
21 entity's reputation may be relied upon to determine the
22 likelihood of success of the proposed ensure the
23 performance of the continuing care retirement
24 community contract.

~~25 (2)–~~

26 (c) Any implication that the entity may be financially
27 responsible for these contracts may be rebutted by a
28 conspicuous statement, in each all continuing care
29 contract contracts and marketing materials, that clearly
30 inform the transferor discloses to prospective residents
31 and all transferors that the entity is not financially
32 responsible.

~~33 (b)–~~

34 (d) On written appeal to the department, and for good
35 cause shown, the department may, in its discretion, allow
36 an affinity group exemption from this section. If an
37 exemption is granted, every continuing care contract
38 shall include a conspicuous statement which clearly
39 informs the transferor discloses to prospective residents

1 *and all transferors* that such entity is not financially
2 responsible.

3 ~~(e)~~

4 (e) If the name of ~~any~~ *an* entity, including, but not
5 limited to, a religion, is used in connection with the
6 development, marketing, or continued operation of a
7 continuing care retirement community, but that entity
8 does not actually own, control, manage, or otherwise
9 operate the ~~facility~~ *continuing care retirement*
10 *community*, the ~~providers~~ *provider* shall expressly
11 clearly disclose ~~this lack of the absence of that~~ affiliation,
12 involvement, or association with the continuing care
13 retirement community in the continuing care contract.

14 ~~(d) All printed advertising materials, including~~
15 ~~brochures, circulars, public announcements, and similar~~
16 ~~publications pertaining to continuing care shall identify~~
17 ~~the current status of the continuing care retirement~~
18 ~~community as follows: (1) If a certificate of authority has~~
19 ~~not been issued, then specify whether the application for~~
20 ~~continuing care has been filed, permit to sell deposit~~
21 ~~subscriptions issued, or provisional certificate of authority~~
22 ~~issued.~~

23 ~~(2) If a certificate of authority has been issued, specify~~
24 ~~the providers' certificate of authority number.~~

25 SEC. 17. Section 1772.2 is added to the Health and
26 Safety Code, to read:

27 1772.2. (a) All printed advertising materials,
28 including brochures, circulars, public announcements,
29 and similar publications pertaining to continuing care or
30 a continuing care retirement community shall specify the
31 number on the provider's provisional certificate of
32 authority or certificate of authority.

33 (b) If the provider has not been issued a certificate of
34 authority, all advertising materials shall specify whether
35 an application has been filed and, if applicable, that a
36 permit to accept deposits, or a provisional certificate of
37 authority has been issued.

38 SEC. 18. Section 1773 of the Health and Safety Code
39 is amended to read:

1 1773. ~~No—(a) A provisional certificate of authority or~~
2 ~~certificate of authority has value for sale may not be sold,~~
3 ~~transferred, or exchange as property exchanged in any~~
4 ~~manner. No A provider shall may not sell or transfer~~
5 ~~ownership of the continuing care retirement community~~
6 ~~or enter into a contract with a third party entity for~~
7 ~~management of the continuing care retirement~~
8 ~~community~~ without the approval of the department.
9 ~~Violation~~ Any violation of this section is grounds for
10 ~~revocation of the certificate of authority shall cause the~~
11 ~~applicable provisional certificate of authority or~~
12 ~~certificate of authority to be forfeited by operation of law~~
13 ~~pursuant to subdivision (c) of Section 1793.7.~~

14 (b) A provider may not enter into a contract with a
15 third party for overall management of the continuing
16 care retirement community without the approval of the
17 department. The department shall review the
18 transaction for consistency with this chapter.

19 (c) Any violation of this section shall be grounds for
20 revocation for the provider's provisional certificate of
21 authority or certificate of authority under Section 1793.21.

22 SEC. 19. Section 1774 of the Health and Safety Code
23 is amended to read:

24 1774. ~~Any—No~~ arrangement ~~for which~~ allowed by a
25 permit to sell ~~deposit subscriptions or accept deposits, a~~
26 ~~provisional certificate or authority, or a certificate of~~
27 ~~authority has been obtained shall not~~ issued by the
28 department under this chapter may be deemed a security
29 for any purpose.

30 SEC. 20. Section 1775 of the Health and Safety Code
31 is amended to read:

32 1775. (a) To the extent that this chapter, as
33 interpreted by the department, conflicts with the
34 statutes, regulations, or interpretations ~~enforced by the~~
35 ~~Department of Real Estate, this chapter as interpreted by~~
36 ~~the department shall have precedence governing the sale~~
37 ~~or hire of real property, this chapter shall prevail.~~

38 (b) Notwithstanding any law or regulation to the
39 contrary, ~~in any~~ a provider for a continuing care
40 retirement community ~~the provider~~ may restrict or

1 abridge the right of any resident, whether or not ~~he~~ *the*
 2 *resident* owns an equity interest, to sell, lease, encumber,
 3 or otherwise convey any interest in the resident's unit,
 4 and may require that the resident only sell, lease, or
 5 otherwise convey the interest to persons approved by the
 6 provider. Provider approval may be based on factors
 7 which include, but are not limited to, age, health status,
 8 insurance risk, financial status, or burden on the
 9 provider's personnel, resources, or physical facility. ~~Any~~
 10 *The provider shall record any* restrictions on a real
 11 property interest ~~shall be recorded by the provider.~~

12 (c) To the extent that this chapter conflicts with
 13 Sections 51.2 and 51.3 of the Civil Code, this chapter shall
 14 have precedence. A continuing care provider, at its
 15 discretion, may limit entrance based on age.

16 (d) This chapter imposes minimum requirements
 17 upon any entity ~~undertaking the responsibility for~~
 18 *promising to provide, proposing to promise to provide, or*
 19 *providing one or more elements of care to an elderly*
 20 *person for the duration of his or her life or for a term in*
 21 *excess of one year, in exchange for any prepayment or*
 22 *transfer of property prior to the services actually being*
 23 *rendered, whether or not the prepayment or transfer of*
 24 *property is supplemented with periodic or other*
 25 *payments continuing care.*

26 (e) This chapter shall be liberally construed for the
 27 protection of persons attempting to ~~secure their care for~~
 28 ~~the remainder of their lifetime or for a period in excess~~
 29 ~~of one year~~ *obtain or receiving continuing care.*

30 (f) A resident's entry into a continuing care contract
 31 described in this chapter shall be presumptive evidence
 32 of the resident's intent not to return to his or her prior
 33 residence to live for purposes of qualifying for Medi-Cal
 34 coverage under Sections 14000 et seq. of the Welfare and
 35 Institutions Code and Section 50425 of Title 22 of the
 36 California Code of Regulations.

37 *SEC. 21. Section 1776.6 of the Health and Safety Code*
 38 *is amended to read:*

39 1776.6. (a) Pursuant to the California Public Records
 40 Act (Chapter 3.5 (commencing with Section 6250) of

1 Division 7 of Title 1 of the Government Code) and the
2 Information Practices Act of 1977 (Chapter 1
3 (commencing with Section 1798) of Title 1.8 of Part 4 of
4 Division 3 of the Civil Code), the following documents
5 are public information and shall be provided by the
6 department upon request: audited financial statements,
7 annual reports and accompanying documents,
8 compliance or noncompliance with reserve
9 requirements, whether an application for a Permit
10 permit to Sell Deposit Subscriptions accept deposits and
11 Certificate certificate of Authority authority has been
12 filed, whether a permit or certificate has been granted or
13 denied, and the type of care offered by the provider.

14 (b) Resident—The department shall regard resident
15 data used in the calculation of reserves shall be regarded
16 by the department as confidential.

17 SEC. 22. Section 1777 of the Health and Safety Code
18 is amended to read:

19 1777. (a) The Continuing Care Contracts Advisory
20 Committee of the State Department of Social Services
21 department shall act in an advisory capacity to the
22 department on matters relating to continuing care
23 contracts.

24 (b) The members of the committee shall include:

25 (1) Three representatives of nonprofit continuing
26 care providers pursuant to this chapter, each of whom
27 shall have offered continuing care services for at least five
28 years prior to appointment. One member shall represent
29 a multifacility provider and shall be appointed by the
30 Governor in even years. One member shall be appointed
31 by the Senate Committee on Rules and shall be appointed
32 in odd years. One member shall be appointed by the
33 Speaker of the Assembly and shall be appointed in odd
34 years.

35 (2) Three senior citizens who are not eligible for
36 appointment pursuant to paragraphs (1) and (4) who
37 shall represent consumers of continuing care services, at
38 least two of whom shall be residents of continuing care
39 retirement communities but not residents of the same
40 provider. One senior citizen member shall be appointed

1 by the Governor ~~and shall be appointed~~ in even years.
 2 One *senior citizen* member shall be appointed by the
 3 Senate Committee on Rules ~~and shall be appointed~~ in odd
 4 years. One member shall be appointed by the Speaker of
 5 the Assembly and shall be appointed in odd years.

6 (3) A certified public accountant with experience in
 7 the ~~community~~ *continuing* care industry, who is not a
 8 provider of continuing care services. This member shall
 9 be appointed by the Governor in even years.

10 (4) A representative of a for-profit provider of
 11 continuing care contracts pursuant to this chapter. This
 12 member shall be appointed by the Governor in even
 13 years.

14 (5) An actuary. This member shall be appointed by the
 15 Governor in even years.

16 (c) Commencing January 1, 1997, all members shall
 17 serve two-year terms and be appointed based on their
 18 interest and expertise in the subject area. The Governor
 19 shall designate the chairperson for the committee with
 20 the advice and consent of the Senate. A member may be
 21 reappointed at the pleasure of the appointing power. ~~It~~
 22 ~~shall be the duty of the~~ *The* appointing power ~~to~~ *shall* fill
 23 all vacancies on the committee within 60 days. ~~These~~ *All*
 24 members shall continue to serve until their successors are
 25 appointed and qualified.

26 (d) The members of the committee shall serve
 27 without compensation, except that each member shall be
 28 paid from the Continuing Care ~~Contract~~ Provider Fee
 29 Fund a per diem of twenty-five dollars (\$25) for each
 30 day's attendance at a meeting of the committee not to
 31 exceed six days in any month. The members of the
 32 committee shall also receive their actual and necessary
 33 traveling expenses incurred in the course of their duties.
 34 *Reimbursement of travel expenses shall be at rates not to*
 35 *exceed those applicable to comparable state employees*
 36 *under Department of Personnel Administration*
 37 *regulations.*

38 (e) Prior to commencement of service, each member
 39 shall file with the department a statement of economic
 40 interest and a statement of conflict of interest pursuant

1 to Article 3 (commencing with Section 87300) of the
2 Government Code.

3 (f) If, during the period of appointment, any member
4 no longer meets the qualifications of subdivision (b), that
5 member shall submit his or her resignation to their
6 appointing power and a qualified new member shall be
7 appointed *by the same power* to fulfill the remainder of
8 the term.

9 *SEC. 23. Section 1777.2 of the Health and Safety Code*
10 *is amended to read:*

11 1777.2. (a) The Continuing Care ~~Contracts~~ Advisory
12 Committee shall:

13 (1) Review the financial and managerial condition of
14 ~~each~~ continuing care retirement ~~community~~
15 *communities* operating under a certificate of authority.

16 (2) Review the financial condition of any continuing
17 care retirement community that the committee
18 determines is indicating signs of financial difficulty and
19 may be in need of close supervision.

20 (3) Monitor the condition of ~~continued~~ *those*
21 *continuing* care retirement communities ~~as that~~ the
22 department or the chair of the committee may ~~direct~~
23 *request*.

24 (4) Make available consumer information on the
25 *selection of continuing care contracts* and necessary
26 contract protections in the purchase of continuing care
27 contracts.

28 (5) Review new applications regarding financial,
29 actuarial, and marketing feasibility as requested by the
30 department.

31 ~~(6) The Continuing Care Contracts Committee of the~~
32 ~~department, in consultation with residents and providers~~
33 ~~shall, by December 31, 1997, advise the department of its~~
34 ~~suggestions to protect continuing care retirement~~
35 ~~communities and residents from the financial~~
36 ~~consequences caused by earthquakes and other natural~~
37 ~~disasters. This paragraph shall become inoperative on~~
38 ~~January 1, 1998.~~

39 (b) The committee shall make recommendations to
40 the department regarding needed changes in its rules

1 and regulations and upon request provide advice
2 regarding the feasibility of new continuing care
3 retirement communities and the correction of problems
4 relating to the management or operation of any
5 continuing care retirement community. The committee
6 shall also perform any other advisory functions necessary
7 to improve the management and operation of continuing
8 care retirement communities.

9 (c) The committee may report on its
10 recommendations directly to the director of the
11 department.

12 (d) The committee may hold meetings, as deemed
13 necessary to the performance of its duties.

14 *SEC. 24. Section 1777.4 of the Health and Safety Code*
15 *is amended to read:*

16 1777.4. Any member of the Continuing Care
17 ~~Contracts~~ Advisory Committee is immune from civil
18 liability based on acts performed in his or her official
19 capacity. Costs of defending civil actions brought against
20 a member for acts performed in his or her official capacity
21 shall be borne by the complainant. However, nothing in
22 this section immunizes any member for acts or omissions
23 performed with malice or in bad faith.

24 *SEC. 25. Section 1779 of the Health and Safety Code*
25 *is amended to read:*

26 1779. (a) An entity shall file an application for a
27 permit to ~~sell deposit subscriptions~~ *accept deposits* and
28 *for a* certificates of authority ~~shall be filed~~ with the
29 department, as set forth in this chapter, ~~in any of the~~
30 ~~following circumstances~~ *before doing any of the*
31 *following:*

32 (1) ~~Prior to entering into any continuing care~~
33 ~~contracts or any deposit subscription agreements.~~
34 *Accepting any deposit, reservation fee, or any other*
35 *payment that is related to a promise or proposal to*
36 *promise to provide continuing care.*

37 (2) ~~Prior to initiating construction of a prospective~~
38 ~~continuing care retirement community. Entering into~~
39 *any reservation agreement, deposit agreement, or*
40 *continuing care contract.*

1 ~~(3) Prior to initiating construction on a new phase or~~
2 ~~expansion of an existing continuing care retirement~~
3 ~~community. An expansion has occurred when there is an~~
4 ~~increase in Residential Care Facility for the Elderly~~
5 ~~license capacity, an increase in the number of units at the~~
6 ~~continuing care retirement community, an increase in~~
7 ~~the number of skilled nursing beds, or additions to or~~
8 ~~replacement of existing continuing care retirement~~
9 ~~community structures that affects obligations to current~~
10 ~~residents. The department may waive all or portions of~~
11 ~~the application content requirements under Section~~
12 ~~1779.4 for an expansion of an existing continuing care~~
13 ~~retirement community. Commencing construction of a~~
14 ~~prospective continuing care retirement community. If~~
15 ~~the project is to be constructed in phases, the application~~
16 ~~shall include all planned phases.~~

17 ~~(4) Prior to converting an existing structure to a~~
18 ~~continuing care retirement community. Expanding an~~
19 ~~existing continuing care retirement community whether~~
20 ~~by converting existing buildings or by new construction.~~

21 ~~(5) Prior to recommencing marketing on a planned~~
22 ~~facility when the applicant has previously forfeited a~~
23 ~~permit to sell deposit subscriptions pursuant to Section~~
24 ~~1793.7. Converting an existing structure to a continuing~~
25 ~~care retirement community.~~

26 ~~(6) Prior to executing new continuing care contracts~~
27 ~~after a provisional or final certificate of authority has been~~
28 ~~inactivated, revoked, surrendered, or forfeited.~~
29 ~~Recommencing marketing on a planned continuing care~~
30 ~~retirement community when the applicant has~~
31 ~~previously forfeited a permit to accept deposits pursuant~~
32 ~~to Section 1703.7.~~

33 ~~(7) Prior to closing the sale or transfer of a continuing~~
34 ~~care retirement community. Executing new continuing~~
35 ~~care contracts after a provisional certificate of authority~~
36 ~~or certificate of authority has been inactivated, revoked,~~
37 ~~surrendered, or forfeited.~~

38 ~~(8) Closing the sale or transfer of a continuing care~~
39 ~~retirement community or assuming responsibility for~~
40 ~~continuing care contracts.~~

1 ~~(b) If the provider undergoes an organizational~~
2 ~~change, including, but not limited to, a change in~~
3 ~~structure, separation, or merger, a new application shall~~
4 ~~be required and a new certificate of authority must be~~
5 ~~issued by the department before any continuing care~~
6 ~~contracts may be executed by the new entity.~~

7 ~~(c) A new application is not required for an entity~~
8 ~~name change if there is no change in the entity structure~~
9 ~~or management. If the provider undergoes a name~~
10 ~~change, the provider shall notify the department of the~~
11 ~~name change and shall return the previously issued~~
12 ~~certificate of authority for reissuance under the new~~
13 ~~corporate name.~~

14 ~~(d) For purposes of paragraph (4) of subdivision (a),~~
15 ~~an expansion of a continuing care retirement community~~
16 ~~shall be deemed to occur when any of the following~~
17 ~~occurs:~~

18 ~~(1) An increase in the capacity stated on the~~
19 ~~residential care facility for the elderly license issued to the~~
20 ~~continuing care retirement community.~~

21 ~~(2) An increase in the number of units at the~~
22 ~~continuing care retirement community.~~

23 ~~(3) An increase in the number of skilled nursing beds,~~
24 ~~or additions to, or replacement of, existing continuing~~
25 ~~care retirement community structures that may affect~~
26 ~~obligations to current residents.~~

27 ~~(c) Any provider that alters, or proposes to alter, its~~
28 ~~organization, including by means of a change in the type~~
29 ~~of entity it is, separation from another entity, merger,~~
30 ~~affiliation, spinoff, or sale, shall file a new application and~~
31 ~~obtain a new certificate of authority before the new entity~~
32 ~~may enter into any new continuing care contracts.~~

33 ~~(d) A new application shall not be required for an~~
34 ~~entity name change if there is no change in the entity~~
35 ~~structure or management. If the provider undergoes a~~
36 ~~name change, the provider shall notify the department in~~
37 ~~writing of the name change and shall return the~~
38 ~~previously issued certificate of authority for reissuance~~
39 ~~under the new name.~~

1 (e) Within 10 days of submitting an application for a
2 certificate of authority pursuant to paragraph (3)~~—or~~, (4),
3 (7), *or* (8) of subdivision (a), the provider shall notify
4 residents of the *provider's* existing community or
5 communities of its application ~~for a permit~~. The provider
6 shall notify ~~the resident's council or association of any~~
7 ~~plans filed~~ *its resident associations of any filing* with the
8 department to obtain new financing, additional financing
9 ~~for the facility~~ *a continuing care retirement community*,
10 the sale or transfer of a *continuing care retirement*
11 *community facility*, any change in structure, and of any
12 applications to the department for any expansion of ~~the~~
13 ~~facility~~ *a continuing care retirement community*. A
14 summary of the plans and application shall be posted in
15 a prominent location in the ~~facility~~ *continuing care*
16 *retirement community* so as to be accessible to all
17 residents and the general public, indicating in the
18 summary where the full plans and application may be
19 inspected in the ~~facility~~ *continuing care retirement*
20 *community*.

21 (f) *When the department determines that it has*
22 *sufficient information on the provider or determines that*
23 *the provisions do not apply and the protections provided*
24 *by this article are not compromised, the department may*
25 *eliminate all or portions of the application contents*
26 *required under Section 1779.4 for applications filed*
27 *pursuant to paragraphs (4), (5), (6), (7), and (8) of*
28 *subdivision (a) or pursuant to subdivision (c).*

29 SEC. 26. Section 1779.2 of the Health and Safety Code
30 is amended to read:

31 1779.2. (a) ~~A formal application shall be made by a~~
32 ~~person or organization to the department for a permit to~~
33 ~~sell deposit subscriptions and certificate of authority, as~~
34 ~~provided in this chapter.~~

35 (b) ~~A separate application shall be required for each~~
36 ~~proposed project which includes all planned phases.~~

37 (c) ~~The application shall be signed under penalty of~~
38 ~~perjury by the applicant. If the applicant is a corporation,~~
39 ~~the chief executive officer shall sign the application and~~
40 ~~certify that to the best of his or her knowledge and belief,~~

1 ~~the items are correct. If the applicant is a partnership,~~
2 ~~each general partner shall sign the application and~~
3 ~~certification. If there are multiple applicants, the above~~
4 ~~requirements apply to each.~~

5 ~~(d) An application fee shall be required whenever a~~
6 ~~provider applies. Any entity filing an application for a~~
7 ~~permit to sell deposit subscriptions and accept deposits~~
8 ~~or a certificate of authority shall pay an application fee.~~

9 ~~The application fee shall be calculated and submitted~~
10 ~~to the department as follows:~~

11 ~~(1) Each application shall be accompanied by~~
12 ~~payment to the Continuing Care Provider Fee Fund of 80~~
13 ~~percent of the application fee for all currently planned~~
14 ~~phases. Processing of the application shall not begin until~~
15 ~~this fee is received.~~

16 ~~(A)–~~

17 *(b) The applicant shall pay 80 percent of the*
18 *application fee for all planned phases at the time the*
19 *applicant submits its application. The 80 percent*
20 *payment shall be made by check payable to the*
21 *Continuing Care Provider Fee Fund. The department*
22 *shall not process the application until it has received this*
23 *fee.*

24 *(c) For new continuing care retirement communities*
25 *or for the sale or transfer of existing continuing care*
26 *retirement communities, the application fee is shall be*
27 *calculated as one-tenth of 1 percent of the purchase price*
28 *of the continuing care retirement community, or the*
29 *estimated construction cost, including the purchase price*
30 *of the land or the present value of any long-term lease and*
31 *all items listed in subparagraph (D) of paragraph (2) of*
32 *subdivision (y) of Section 1779.4.*

33 ~~(B)–~~

34 *(1) For existing continuing care retirement*
35 *communities that are proposing new phases, remodeling*
36 *or an expansion, the application fee is shall be calculated*
37 *as one-tenth of 1 percent of the cost of the addition,*
38 *annexation, or renovation, including the cost value of the*
39 *land and improvements and all items listed in*

1 *subparagraph (D) of paragraph (2) of subdivision (y) of*
2 *Section 1779.4.*

3 ~~(C)~~

4 (2) For existing facilities converting to continuing
5 care retirement communities, the application fee ~~is~~ *shall*
6 *be* calculated as one-tenth of 1 percent of the current
7 appraised value of the facility, including ~~the~~ land, or
8 present value of any long-term lease.

9 ~~(2) Payment to the Continuing Care Provider Fee~~
10 ~~Fund of~~

11 (3) *For organizational changes, the application fee*
12 *shall be determined by the department based on the time*
13 *and resources it considers reasonably necessary to process*
14 *the application, including any consultant fees. The*
15 *minimum application fee for those applications shall be*
16 *two thousand dollars (\$2,000).*

17 (d) *The applicant shall pay the remainder of the*
18 *application fee shall be made at or before the time of*
19 ~~issuance~~ *of the provisional certificate of authority is*
20 *issued, or in the case of expansions or remodeling, before*
21 *final approval of the project is granted. The applicant*
22 *shall make this payment by check payable to the*
23 *Continuing Care Provider Fee Fund. The application fee*
24 *shall be calculated as one-tenth of 1 percent of the*
25 ~~purchase price of the continuing care retirement~~
26 ~~community, or the actual construction cost, including the~~
27 ~~purchase price of the land or the present value of any~~
28 ~~long-term lease, less the payment included with the~~
29 ~~application. The provisional certificate of authority shall~~
30 ~~not be issued until the balance of the fee is paid.~~

31 SEC. 27. *Section 1779.4 of the Health and Safety Code*
32 *is amended to read:*

33 1779.4. An application shall contain all of the
34 following:

35 (a) *A statement signed by the applicant under penalty*
36 *of perjury certifying that to the best of the applicant's*
37 *knowledge and belief, the items submitted in the*
38 *application are correct. If the applicant is a corporation,*
39 *the chief executive officer shall sign the statement. If*

1 *there are multiple applicants, these requirements shall*
2 *apply to each applicant.*

3 (b) The name and business address of the applicant.

4 ~~(b)–~~

5 (c) An itemization of the total fee calculation,
6 including sources of figures used, and a check in the
7 amount of 80 percent of the total application fee.

8 ~~(c)–~~

9 (d) The name, address, and a description of the real
10 property of the continuing care retirement community.

11 ~~(d) The estimated~~

12 (e) *An estimate of the* number of continuing care
13 residents ~~of~~ *at* the continuing care retirement
14 community.

15 ~~(e)–~~

16 (f) A description of the proposed continuing care
17 retirement community, including the services and care to
18 be *provided to residents or* available for residents—~~or~~
19 ~~provided to residents, or both.~~

20 ~~(f)–~~

21 (g) A statement indicating whether the application is
22 for a certificate of authority to enter into *continuing care*
23 *or* life care contracts.

24 ~~(g) Documentation evidencing~~

25 (h) *A license to operate the proposed continuing care*
26 *retirement community as a residential care facility for the*
27 *elderly or documentation establishing that the applicant*
28 *has received a preliminary approval for licensure from*
29 *the department's Community Care Licensing Division—of*
30 ~~the State Department of Social Services or Division.~~

31 (i) *A license to operate the proposed skilled nursing*
32 *facility or evidence that an application has been filed with*
33 *the Licensing and Certification Division of the State*
34 *Department of Health Services, as—appropriate if*
35 *applicable.*

36 ~~(h)–~~

37 (j) If the applicant is an individual, a statement
38 disclosing any revocation or other disciplinary action
39 taken, or in the process of being taken, against a license,

1 permit, or certificate held or previously held by the
2 applicant.

3 ~~(i)~~

4 (k) A description of any matter in which any ~~principal~~
5 *interested party* involved with the proposed continuing
6 care retirement community has been convicted of a
7 felony or pleaded nolo contendere to a felony charge, or
8 been held liable or enjoined in a civil action by final
9 judgment, if the felony or civil action involved fraud,
10 embezzlement, fraudulent conversion, or the
11 misappropriation of property. For the purpose of this
12 subdivision, ~~“principal” means~~ *“interested party”*
13 *includes* any representative of the developer of the
14 *proposed continuing care retirement community* or the
15 applicant, including ~~a~~ all general ~~partner~~ partners, chief
16 executive ~~officer~~ officers, or chief operating ~~officer~~
17 *officers and board members of corporations; and*
18 *managing members and managers of limited liability*
19 *companies for each entity; who has significant*
20 decisionmaking authority with respect to the proposed
21 continuing care retirement community.

22 ~~(j)~~

23 (l) If the applicant is an entity other than an
24 individual, the following information *shall* also ~~shall~~ be
25 submitted:

26 (1) A statement identifying the type of legal entity and
27 listing the interest and extent of the interest of each
28 principal in the legal entity. For the purposes of this
29 paragraph, “principal” means any person or entity
30 having a financial interest in the legal entity of 10 percent
31 or more. When the application is submitted in the name
32 of a corporation, the parent, sole corporate shareholder,
33 or sole corporate member who controls the operation of
34 the continuing care retirement community shall be listed
35 as an applicant. When multiple corporate applicants exist,
36 they shall be listed jointly by corporate name on the
37 application, and the certificate of authority shall be issued
38 in the joint names of the corporations. When the
39 application is submitted by a partnership, all general
40 partners shall be ~~listed~~ *named as applicants* ~~coapplicants~~

1 and the department shall name them as coproviders on
2 any certificate of authority ~~shall be issued in the joint~~
3 ~~names of the general partners it issues.~~

4 (2) The names of the members of the ~~board of~~
5 ~~directors, the trustees, the general partners, or other~~
6 ~~responsible officers of the legal entity~~ provider's
7 governing body.

8 (3) A statement ~~as to~~ indicating whether the applicant
9 was or is affiliated with a religious, charitable, nonprofit
10 or for-profit organization, and the extent of any affiliation.
11 The statement shall also include the extent, if any, to
12 which the affiliate organization will be responsible for the
13 financial and contract obligations of the applicant and
14 shall be signed by a responsible officer of the affiliate
15 organization.

16 (4) A statement identifying any parent ~~corporation~~
17 ~~entity~~ or other affiliate ~~corporation~~ entity, the primary
18 activities of each entity identified, the relationship of
19 each entity to the applicant, and the interest in the
20 applicant held by each entity.

21 (5) Copies of all contracts, management agreements,
22 or other documents setting forth the relationships ~~of the~~
23 ~~with each of the other entities.~~

24 (6) A statement ~~as to~~ indicating whether the
25 applicant, a principal, a parent entity, affiliate entity, ~~or~~
26 subsidiary ~~corporation~~ entity, ~~any other affiliate entity,~~
27 any responsible employee, manager, or board member,
28 or anyone who otherwise profits from the continuing care
29 retirement community has had applied against it any
30 injunctive or restrictive order of a court of record, or any
31 suspension or revocation of any state or federal license,
32 permit, or certificate, arising out of or relating to business
33 activity of health or nonmedical care, including, but not
34 limited to, actions affecting a license to operate a health
35 care institution, nursing home, intermediate care facility,
36 hospital, home health agency, residential care facility for
37 the elderly, community care facility, or child day care
38 facility.

39 ~~(k)~~

1 (m) A description of the business experience of the
2 ~~applicant~~ *applicants* in the operation or management of
3 similar facilities.

4 ~~(l)~~

5 (n) A copy of any advertising material regarding the
6 proposed continuing care retirement community
7 prepared for distribution or publication.

8 ~~(m)~~

9 (o) Evidence of the bonds required by Section 1789.8.

10 ~~(n) Copies of the proposed continuing care contracts~~
11 ~~to be entered into with residents of the continuing care~~
12 ~~retirement community.~~

13 ~~(o)~~

14 (p) *A copy of any proposed reservation agreement.*

15 (q) A copy of the proposed deposit ~~subscription~~
16 ~~agreement form agreements.~~

17 ~~(p)~~

18 (r) The name of the proposed escrow agent and
19 depository.

20 ~~(q) Copies~~

21 (s) *Any copies of all reservation and deposit escrow*
22 *account agreements.*

23 ~~(r)~~

24 (t) *A copy of any proposed continuing care contracts.*

25 (u) A statement of any ~~periodic~~ *monthly care* fees to
26 be paid by residents, the components and services
27 considered in determining such fees, and the manner by
28 which the provider may adjust these fees in the future. If
29 the continuing care retirement community is already in
30 operation, or if the provider operates one or more similar
31 continuing care retirement communities within this
32 state, the statement shall include tables showing the
33 frequency and each percentage increase in ~~periodic~~
34 *monthly care* rates at each continuing care retirement
35 community for the previous five years, or any shorter
36 period for which each continuing care retirement
37 community may have been operated by the provider or
38 his or her predecessor in interest.

39 ~~(s)~~

(v) (1) A statement of the ~~provisions~~ *actions* that have been ~~made~~, or will be ~~made~~, *taken by the applicant to provide reserve funding or security by the provider to enable the provider fund reserves as required by Section 1792.2 or 1793 and to otherwise ensure that the applicant will have adequate finances to fully perform his or her obligations pursuant to continuing care contracts, including, but not limited to, the establishment of escrow accounts in financial institutions, trusts, or reserve funds contract obligations.*

~~(t)~~

(2) *The statement shall describe actions such as establishing restricted accounts, sinking funds, trust accounts, or additional reserves.*

(3) *If the applicant is purchasing an existing continuing care retirement community from a selling provider, the applicant shall provide an actuarial report to determine the liabilities of existing continuing care contracts and demonstrate the applicant's ability to fund those obligations.*

(w) A copy of audited financial statements for the three most recent fiscal years of the applicant or any shorter period of time the applicant has been in existence, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants. The audited financial statements shall be accompanied by a statement signed and dated by both the chief financial officer and chief executive officer for the ~~identified corporation, or~~ *applicant or, if applicable, by each general partner, or each managing member and manager, stating that the financial statements are complete, true, and correct in all material matters to the best of their knowledge.*

~~(u)~~

(x) Unaudited interim financial statements shall be included if the applicant's fiscal year ended more than 90 days prior to the date of filing. The statements shall be either quarterly or monthly, and prepared on the same basis as the annual audited financial statements or *any*

1 other basis acceptable to the department. ~~The period~~
2 ~~between the end of the most recent fiscal year for which~~
3 ~~audited financial statements are submitted and a date not~~
4 ~~more than 90 days prior to the date the application is filed~~
5 ~~shall be covered in the unaudited interim financial~~
6 ~~statements.~~

7 ~~(v)–~~

8 (y) A financial *study* and a marketing *feasibility* study
9 *that reasonably project the feasibility of the proposed*
10 *continuing care retirement community and are prepared*
11 *by a firm or firms acceptable to the department. The*
12 *study shall include or address, as appropriate. These*
13 *studies shall address and evaluate, at a minimum, all of the*
14 *following items:*

15 (1) ~~A narrative describing the~~ The applicant and its
16 prior experience, qualifications, and management,
17 including a ~~descriptive analysis~~ *detailed description* of
18 the *applicant's* proposed continuing care retirement
19 community ~~and~~, its service package, fee structure, and
20 anticipated opening date.

21 (2) ~~A narrative describing the financing and~~ The
22 construction plans, *construction financing, and*
23 *permanent financing* for the proposed continuing care
24 retirement community, including a *statement*
25 *description* of the anticipated source ~~and application of~~
26 ~~the, cost, terms, and use of all funds to be used in the~~
27 ~~purchase, lease, rental, or land acquisition, construction,~~
28 ~~and operation of the continuing care retirement~~
29 ~~community. This statement proposal shall include, but~~
30 ~~not be limited to at a minimum, all of the following:~~

31 (A) A description of ~~any mortgage loan or other~~
32 ~~long-term financing intended to be used for the financing~~
33 ~~of all debt to be incurred by the applicant for the~~
34 continuing care retirement community, including the
35 anticipated terms and costs of the financing. ~~This~~ The
36 *applicant's outstanding indebtedness shall related to the*
37 *continuing care retirement community may not, at any*
38 *time, exceed the appraised value of the continuing care*
39 *retirement community.*

1 (B) ~~Equity~~—A description of the source and amount of
2 the equity to be contributed by the applicant.

3 (C) ~~Other sources of funds~~—A description of the source
4 and amount of all other funds, including entrance fees, if
5 applicable that will be necessary to complete and operate
6 the continuing care retirement community.

7 (D) ~~An estimate of the cost of purchasing, leasing,~~
8 ~~renting, designing, or constructing and equipping the~~
9 ~~continuing care retirement community, including, but~~
10 ~~not limited to, financing expense, legal expense, land~~
11 ~~costs, occupancy development costs, and~~ A statement
12 itemizing all estimated project costs, including the real
13 property costs and the cost of acquiring or designing and
14 constructing the continuing care retirement community,
15 and all other similar costs that the provider expects to
16 incur, ~~or become obligated for,~~ prior to the
17 commencement of operation. This itemization shall
18 identify all cost related to the continuing care retirement
19 community or project, including financing expenses,
20 legal expenses, occupancy development costs, marketing
21 costs, and furniture and equipment.

22 (E) ~~Interest~~—A description of the interest expense,
23 insurance premiums, and property taxes that will be
24 incurred prior to opening.

25 (F) An estimate of any proposed continuing care
26 retirement community reserves required for items such
27 as debt service, insurance premiums, and operations.

28 (G) An estimate of ~~any funds that are anticipated to~~
29 ~~the amount of funds, if any, that will be necessary to fund~~
30 ~~startup losses, fund statutory and refundable contract~~
31 ~~reserves, and to assure otherwise provide additional~~
32 ~~financial resources in an amount sufficient to ensure full~~
33 ~~performance of the obligations of~~ by the provider
34 ~~pursuant to of its continuing care contracts, including, but~~
35 ~~not limited to, any reserve fund escrow contract~~
36 ~~obligations.~~

37 (3) An analysis of the potential market for the
38 applicant's continuing care retirement community,
39 addressing such items as:

1 (A) ~~Service~~—*A description of the service area,*
2 *including its demographic, economic, and growth*
3 *characteristics.*

4 (B) ~~Forecasts of~~—*A forecast of the market penetration*
5 *the continuing care retirement community will achieve*
6 *based on the proposed fee structure.*

7 (C) Existing and planned competition in and about
8 the primary service area.

9 (4) A detailed description of the sales and marketing
10 plan, ~~addressing such items as~~ *including all of the*
11 *following:*

12 (A) Marketing ~~schedule~~ *projections*, anticipated sales,
13 and cancellation rates.

14 (B) Month-by-month forecast of unit sales through
15 sellout.

16 (C) A ~~marketing plan describing~~ *description of the*
17 *marketing methods, staffing, and advertising media to be*
18 *used by the applicant.*

19 (D) An estimate of the total entrance fees to be
20 received from residents prior to ~~completion of occupancy~~
21 *opening the continuing care retirement community.*

22 (5) ~~Projections of~~—*Projected move-in rates, deposit*
23 *subscription fee collections, and resident profiles,*
24 *including couple mix by unit type, age distribution, care*
25 *and nursing unit utilization, and unit turnover or resale*
26 *rates.*

27 (6) A description or analysis of development-period
28 costs and revenues. ~~This item should be provided to the~~
29 ~~department on a quarterly basis,~~ throughout the
30 development of the proposed continuing care retirement
31 community.

32 ~~(w)–~~

33 (z) Projected annual financial statements for ~~a~~ *the*
34 *period commencing on the first day of the first applicant's*
35 *current fiscal year, following the most recent year for*
36 ~~which an audited financial statement has been provided,~~
37 *through at least the fifth year of operations operation.*

38 (1) ~~The projected~~—*Projected* annual financial
39 statements shall be *prepared* on an accrual basis using the
40 same accounting principles and procedures as the

audited financial statements furnished pursuant to paragraph (u), but need not be audited subdivision (x).

(2) Separate projected annual cash-flow statements shall be provided. ~~The~~ *These* statements shall ~~cover the entire show projected annual cash flows for the duration of any debt, and be presented on a quarterly basis during the preopening, construction, and fill-up periods~~ associated with the continuing care retirement community. If the ~~real~~ continuing care retirement community property is leased, the cash-flow statement shall ~~project demonstrate~~ the feasibility of closing the continuing care retirement community at the end of the lease period.

(A) The projected annual cash-flow statements shall be submitted, using prevailing rates of interest, ~~with and assume~~ no increase of revenues and expenses due to inflation, ~~as one set of assumptions.~~

(B) The projected annual cash-flow statements shall include *all of* the following:

(i) A detailed ~~listing, including~~ *description and* a full explanation of all assumptions used in preparing the projections, ~~plus~~ *accompanied by* supporting supplementary schedules and calculations, all to be consistent with the financial *study* and marketing feasibility study furnished pursuant to ~~paragraph (v), as subdivision (y). The department may be required by the department for use in evaluating the feasibility of the proposed continuing care retirement community require such other supplementary schedules, calculations, or projections as it determines necessary for an adequate application.~~

(ii) Cash flow from monthly operations, ~~including, but not limited to,~~ *showing projected revenues for* monthly fees received from continuing care contracts, medical unit fees if applicable, other periodic fees, ~~and~~ gifts and bequests used in operations, *and any other projected source of revenue from operations less operating expenses.*

(iii) Contractual cash flow from activities, ~~including, but not limited to,~~ *showing projected revenues from*

1 presales, deposit ~~subscription~~ receipts, ~~and~~ entrance fee
2 ~~receipts fees, and all other projected sources of revenue~~
3 ~~from activities,~~ less contract acquisition, marketing, and
4 advertising expenditures.

5 (iv) Cash ~~flow~~ *flows* from financing activities,
6 including, but not limited to, bond or loan proceeds less
7 bond issue or loan costs and fees, debt service including
8 CAL Mortgage Insurance premiums, trustee fees,
9 principal and interest payments, leases, contracts, rental
10 agreements, or other long-term financing.

11 (v) Cash ~~flow~~ *flows* from investment activities,
12 including, but not limited to, construction progress
13 payments, architect and engineering *services*,
14 furnishings, and equipment not included in the
15 construction contract, project development, inspection
16 and testing, marketable securities, investment earnings,
17 and interfund transfers.

18 (vi) ~~Increase—~~*The increase* or decrease in cash during
19 the projection period.

20 (vii) The beginning cash balance, which means cash,
21 marketable securities, reserves, and other funds on hand,
22 available, and committed to the proposed continuing
23 care retirement community.

24 (viii) ~~Cash—~~*The cash* balance at the end of the period.

25 (ix) Details of the components of the ending cash
26 balance shall be provided for each period presented,
27 including, but not limited to, the ending cash balances for
28 bond reserves, other reserve funds, deposit ~~subscription~~
29 funds, and construction funds balance.

30 (3) If the cash-flow statements required by
31 ~~subparagraph (B)~~ *paragraph (2)* indicate that the
32 provider will have cash balances exceeding two months'
33 projected operating expenses of the continuing care
34 retirement community, a description of the manner in
35 which the cash balances will be invested, and the persons
36 who will be making the investment decisions, shall
37 accompany the application.

38 (4) ~~The applicant shall furnish further explanatory~~
39 ~~information, schedules, and calculations as required by~~
40 ~~the department on actuarial data used to project~~

~~occupancy rate, unit type and couple mix, sex, age, and turnover, refund and sales rate subscription collection rates, a detailed~~ *The department may require the applicant to furnish additional data regarding its operating budget budgets, and projections of cash required for major repairs and improvements, or on any other factor considered during the projected periods matter related to its projections including additional information, schedules, and calculations regarding occupancy rate projections, unit types, couple mix, sex and age estimates for resident mix, turnover rates, refund obligations, and sales.*

~~(x)~~

(aa) (1) A declaration by the applicant acknowledging the requirement of executing and recording that it is required to execute and record a Notice of Statutory Limitation on Transfer (hereinafter referred to as the notice), relating to continuing care retirement community property pursuant to this section.

~~(1) The~~

The notice required in this subdivision shall be acknowledged so as to entitle it to be recorded and suitable for recordation, describe the property, and declare the applicant's intention to use all or part of the described property for the purposes of a continuing care retirement community pursuant to this chapter, and shall be in substantially the following form:

~~NOTICE~~ *“NOTICE OF STATUTORY LIMITATION
ON TRANSFER*

Notice is hereby given that the property described below is licensed, or proposed to be licensed, for use as a continuing care retirement community and accordingly, the use and transfer of the property is subject to the conditions and limitations as to use and transfer set forth in Sections 1773 and 1789.4 of the Health and Safety Code. This notice is recorded pursuant to subdivision ~~(x)~~ (aa) of Section 1779.4 of the Health and Safety Code.

1 The real property, which is legally owned by (insert the
2 name of the legal owner) and is the subject of the
3 statutory limitation to which this notice refers, is more
4 particularly described as follows: (Insert the legal
5 description and the assessor's parcel number of the real
6 property to which this notice ~~applies.~~ *applies.*)”

7
8 (2) The ~~notice~~ *Notice of Statutory Limitation on*
9 *Transfer* shall remain in effect until notice of release is
10 given by the ~~State Department of Social Services~~
11 ~~Continuing Care Contract Branch department.~~ The ~~State~~
12 ~~Department of Social Services Continuing Care~~
13 ~~Contracts Branch department~~ shall execute and record a
14 release of the notice upon proof of complete performance
15 of all obligations to ~~transferors~~ *residents*.

16 (3) Unless a ~~notice~~ *Notice of Statutory Limitation on*
17 *Transfer* has ~~already~~ been recorded with respect to the
18 land on which the applicant or provider is operating, or
19 intends to operate a continuing care retirement
20 community, prior to the date of execution of any trust
21 deed, mortgage, or any other lien or encumbrance
22 securing or evidencing the payment of money and
23 affecting land on which the applicant or provider intends
24 to operate a continuing care retirement community, the
25 applicant or provider shall give the department *advance*
26 written notice of the proposed encumbrance. Upon the
27 giving of notice to the department, the applicant or
28 provider shall execute and record the Notice of Statutory
29 Limitation on Transfer in the office of the county
30 recorder in each county in which any portion of the
31 continuing care retirement community is located *prior to*
32 *encumbering the continuing care retirement community*
33 *property with the proposed encumbrance.*

34 (4) In the event that the applicant or provider and the
35 owner of record are not the same entity ~~or individual~~
36 the date on which execution and recordation of the notice
37 is required, the *leasehold or other interest in the*
38 *continuing care retirement community property held by*
39 *the applicant or provider shall survive in its entirety and*
40 *without change, any transfer of the continuing care*

1 retirement community property by the owner. In
2 addition, the applicant or provider shall record a
3 memorandum of leasehold or other interest in the
4 continuing care retirement community property that
5 includes a provision stating that its interest in the
6 property survives any transfer of the property by the
7 owner. The applicant or provider shall ~~serve~~ provide a
8 copy of the notice ~~on~~ and the memorandum of interest to
9 the owner of record by certified mail and to the
10 department.

11 (5) The notice shall, and, if applicable, the
12 memorandum of interest shall be indexed by the recorder
13 in the grantor-grantee index to the name of the owner of
14 record and the name of the applicant or provider.

15 ~~(y)~~

16 (ab) A statement that the applicant will keep the
17 department informed of any material changes to the
18 proposed continuing care retirement community plan ~~as~~
19 ~~reflected in the or its application form and attachments.~~

20 ~~(z)~~

21 (ac) Any other information ~~as~~ that may be required by
22 the department for the proper administration and
23 enforcement of this chapter.

24 SEC. 28. Section 1779.6 of the Health and Safety Code
25 is amended to read:

26 1779.6. (a) Within seven calendar days of receipt of
27 an initial application for a permit to ~~sell—deposit~~
28 ~~subscriptions~~ accept deposits and a certificate of
29 authority, the department shall acknowledge receipt of
30 the application in writing.

31 (b) Within 30 calendar days ~~of~~ following its receipt of
32 an application, the department shall determine if the
33 application is complete and inform the applicant of its
34 determination. If the department determines that the
35 application is incomplete, its notice to the applicant shall
36 identify the additional forms, documents, information,
37 and other materials required to complete the application.
38 The department shall allow the applicant adequate time
39 to submit the requested information and materials. This
40 review ~~need~~ may not include a review of the determine

1 ~~the adequacy of the documentation submitted materials~~
2 ~~included in the application. Based on this review, the~~
3 ~~department shall do one of the following:~~

4 ~~(1) Notify the applicant of additional forms,~~
5 ~~documents, information, or materials required to~~
6 ~~comprise a complete application and allow the applicant~~
7 ~~adequate time to submit the requested information or~~
8 ~~materials.~~

9 ~~(2) Determine that the application is complete as~~
10 ~~submitted.~~

11 (c) Within 120 calendar days after the department
12 determines that an application is complete, the
13 ~~department shall review the application for adequacy. An~~
14 ~~application shall be adequate if it complies with all the~~
15 ~~requirements imposed by this chapter; and both the~~
16 ~~financial study and marketing study reasonably project~~
17 ~~the feasibility of the proposed continuing care retirement~~
18 ~~community, as well as demonstrate the financial~~
19 ~~soundness of the applicant. The department shall act to~~
20 ~~either approve the application or determine the~~
21 ~~application is inadequate, as adequate under this chapter~~
22 ~~or notify the applicant of the specific deficiency and that~~
23 ~~its application is inadequate. If the application is~~
24 ~~inadequate, the department shall identify the~~
25 ~~deficiencies in the application, provide the appropriate~~
26 ~~code references, and give the applicant an opportunity~~
27 ~~to respond.~~

28 ~~During this period, the department shall do all of the~~
29 ~~following:~~

30 ~~(1) Review the application for adequacy.~~

31 ~~(2) Review the application for compliance with this~~
32 ~~chapter.~~

33 ~~(3) Review the financial plan for feasibility.~~

34 ~~(4) If necessary, request expert consultants to review~~
35 ~~portions of the application and advise the department of~~
36 ~~their opinions.~~

37 (d) Within ~~30~~ 60 calendar days after its receipt of
38 receiving any additional information or clarification
39 required from the applicant, the department shall
40 respond to the applicant's submission in writing;

1 ~~including its determination~~ and state whether each
 2 specific deficiency has been addressed ~~and whether~~
 3 ~~sufficiently to make~~ the application ~~is~~ adequate. If the
 4 department determines that the application is adequate
 5 and in compliance with this chapter, the department shall
 6 ~~act to issue the permit to sell deposit subscriptions accept~~
 7 ~~deposits~~. If the department determines that the response
 8 is inadequate, it may request additional information or
 9 clarification from the applicant pursuant to subdivision
 10 (c) or deny the application pursuant to Section 1779.10.

11 *(e) If the applicant does not provide the department*
 12 *with the additional information within 90 days after the*
 13 *department's notice described in subdivision (c), the*
 14 *application may be denied for being inadequate. Any*
 15 *new application shall require an application fee.*

16 *SEC. 28.5. Section 17797.7 is added to the Health and*
 17 *Safety Code, to read:*

18 *17797.7. (a) Where any portion of the consideration*
 19 *transferred to an applicant as a deposit or to a provider*
 20 *as consideration for a continuing care contract is*
 21 *transferred by a person other than the prospective*
 22 *resident or a resident, that third-party transferor shall*
 23 *have the same cancellation or refund rights as the*
 24 *prospective resident or resident for whose benefit this*
 25 *consideration was transferred.*

26 *(b) A transferor shall have the same rights to cancel*
 27 *and obtain a refund as the depositor under the deposit*
 28 *agreement or the resident under a continuing care*
 29 *contract.*

30 *SEC. 29. Section 1779.8 of the Health and Safety Code*
 31 *is amended to read:*

32 *1779.8. (a) The applicant shall notify the department*
 33 *of material changes in the application information*
 34 *submitted by the applicant to the department in the*
 35 *application materials, including the applicant's financial*
 36 *and marketing projections.*

37 ~~(b) No less than 60 calendar days prior to an~~ An
 38 applicant ~~making~~ shall provide to the department at least
 39 60 days' advance written notice of any proposal to make
 40 any changes in the applicant's corporate name, structure,

1 organization, operation, or financing, ~~the applicant shall~~
2 ~~give written notice of these proposed changes to the~~
3 ~~department. This notice requirement does not apply to~~
4 ~~mere facility staff changes.~~

5 (c) Within 30 calendar days after receiving notice of
6 ~~the proposed change~~ *a change affecting the applicant or*
7 *the application*, the department shall ~~inform~~ advise the
8 ~~applicant of any applicant:~~

9 (1) ~~Whether additional or amended information~~
10 ~~needed is required to process the pending application, or~~
11 ~~whether application.~~

12 (2) ~~Whether an additional application fee is required.~~

13 (3) ~~Whether~~ a new application and application fee
14 must be submitted. The new application fee shall be twice
15 the actual cost of additional ~~consultant~~ review time
16 caused by the change. This additional fee is payable to the
17 department on demand.

18 (d) ~~Failure—~~*The department shall suspend the*
19 *applicant's application and, if applicable, its permit to*
20 *accept deposits if the applicant fails to give written notice*
21 *of changes required by this section shall result in*
22 *suspension of the permit to sell deposit subscriptions,*
23 *pending the outcome of an investigation by section. The*
24 *suspension shall remain in effect until the department*
25 *into the effect has both assessed the potential impact of*
26 *the changes on the interests of the subscribers depositors*
27 *and taken such action as necessary under this chapter to*
28 *protect these interests.*

29 SEC. 30. Section 1779.10 of the Health and Safety
30 Code is amended to read:

31 1779.10. (a) The department shall deny an
32 application for a permit to ~~sell deposit subscriptions and~~
33 ~~accept deposits and a certificate of authority if any of the~~
34 ~~following exists~~ *the applicant fails to do any of the*
35 *following:*

36 (1) ~~Failure to pay—~~*Pay* the application fee as required
37 by Section 1779.2.

38 (2) ~~Failure to submit—~~*Submit* all information required
39 by this chapter.

1 (3) ~~Failure to submit~~ *Submit* evidence to support a
2 reasonable belief that any ~~principal~~ *interested party* of
3 the proposed continuing care retirement community
4 who has committed any offenses listed in subdivision ~~(i)~~
5 *(k)* of Section 1779.4 is of such good character *as* to
6 indicate rehabilitation.

7 (4) ~~If an action specified in subdivision (h) or (j) of~~
8 ~~Section 1779.4 has been taken against an applicant and the~~
9 ~~applicant has failed to submit~~ *Submit* evidence to support
10 a reasonable belief that the applicant is capable of
11 administering the continuing care retirement
12 community in compliance with applicable laws and
13 regulations *when an action specified in subdivision (j) or*
14 *(k) of Section 1779.4 has been taken against the applicant.*

15 (5) ~~Failure to demonstrate~~ *Demonstrate* the
16 feasibility of the proposed continuing care retirement
17 community ~~plan~~.

18 (6) *Comply with residential care facility for the*
19 *elderly licensing requirements.*

20 (b) If the application is denied, ~~the previously~~ *no*
21 *portion of the* paid application fee shall ~~not~~ *be refundable*
22 *or refunded.*

23 (c) Immediately upon the denial of an application, the
24 department shall notify the applicant in writing.

25 (d) The Notice of Denial from the department shall
26 contain all of the following:

27 (1) ~~State~~ *A statement* that the application is denied.

28 (2) ~~List the reasons~~ *The grounds* for the denial.

29 (3) ~~Explain~~ *A statement informing the applicant that*
30 *it has the right of to appeal.*

31 (4) ~~State~~ *A statement* that the applicant has 30
32 calendar days from the date that the Notice of Denial was
33 mailed to appeal the denial, and where to send the
34 appeal.

35 (e) If the applicant appeals the denial, further
36 proceedings shall be conducted in accordance with
37 Chapter 5 (commencing with Section 11500) of Part 1 of
38 Division 3 of Title 2 of the Government Code.

39 *SEC. 31. Section 1780 of the Health and Safety Code*
40 *is amended to read:*

1 1780. The department shall issue a permit to ~~sell~~
2 ~~deposit-subscriptions~~ *accept deposits* when it has *done all*
3 *of the following*:

4 (a) Determined that the application is ~~complete~~
5 *adequate*.

6 (b) Determined that the proposed continuing care
7 retirement community *financial and marketing and*
8 ~~feasibility-plans studies~~ are acceptable.

9 (c) Reviewed and approved the deposit ~~subscription~~
10 ~~agreement agreements~~.

11 (d) Reviewed and approved the *deposit* escrow
12 *account agreement*.

13 *SEC. 32. Section 1780.2 of the Health and Safety Code*
14 *is amended to read:*

15 1780.2. (a) A deposit ~~subscription~~ may be ~~made paid~~
16 in one or several payments, ~~to begin~~ *at or after* the time
17 the parties enter into the deposit ~~subscription~~ agreement.

18 A deposit ~~subscription~~ shall be paid by cash or cash
19 equivalent, jointly payable to the applicant and the
20 escrow agent or depository. Possession and control of any
21 such instrument ~~must~~ *shall* be transferred to the escrow
22 agent at the time the deposit is paid.

23 (b) A processing fee may be added to the deposit
24 ~~subscription~~.

25 (1) The processing fee shall not exceed ~~one~~ *1* percent
26 of the amount of the average entrance fee *or five hundred*
27 *dollars (\$500), whichever is greater*.

28 (2) A nonrefundable processing fee may be paid
29 directly to the applicant without being placed in the
30 *deposit* escrow account.

31 (c) Payments made ~~to the applicant from~~ *by a*
32 ~~subscriber depositor~~ for upgrades or modifications to the
33 living unit shall not be placed in escrow with deposit
34 subscriptions. ~~Written~~ *The applicant shall provide*
35 *written* refund policies shall be given to the ~~subscriber~~
36 *depositor* *before accepting any payments for*
37 *modifications or upgrades*.

38 (d) *The applicant shall furnish to the department*
39 *within the first 10 days of each calendar month a list of all*
40 *residents who have made payments for modifications or*

1 *upgrades, the amounts each resident has paid, the dates*
 2 *of each payment, and the unit to be modified or upgraded*
 3 *for each resident.*

4 *(e) All payments for modifications or upgrades shall be*
 5 *refunded to the depositor with interest if the applicant*
 6 *does not receive a certificate of authority for the proposed*
 7 *continuing care retirement community or expansion.*

8 *(f) The department may record a lien against the*
 9 *continuing care retirement community property, or any*
 10 *portion of the continuing care retirement community*
 11 *property, to secure the applicant's obligations to refund*
 12 *the depositor's payments made for modifications or*
 13 *upgrades. Any lien created under this section shall be to*
 14 *protect depositors governed by Section 1793.15.*

15 *SEC. 33. Section 1780.4 of the Health and Safety Code*
 16 *is amended to read:*

17 1780.4. (a) All deposit ~~subscription~~ agreements
 18 ~~entered into~~ between the applicant and the ~~subscriber~~
 19 *depositor* shall be in writing and shall contain all
 20 information required by this section.

21 (b) All deposit ~~subscription~~ agreement forms shall be
 22 approved by the department prior to their use.

23 (c) The requirements of this chapter and Chapter 3.2
 24 (commencing with Section 1569) shall be the bases for
 25 approval of the forms by the department.

26 (d) All text in deposit ~~subscription~~ agreement forms
 27 shall be printed in at least 10-point typeface.

28 (e) The deposit ~~subscription~~ agreement form shall
 29 provide ~~for~~ all of the following:

30 (1) An estimated date for commencement of
 31 construction of the proposed continuing care retirement
 32 community or, *if applicable*, each phase, ~~if applicable~~, not
 33 to exceed 36 months from the date the permit to ~~sell~~
 34 ~~deposit subscriptions~~ *accept deposits* is issued.

35 (2) ~~Identification~~—*A statement to the effect that the*
 36 *applicant will notify depositors of any material change in*
 37 *the application.*

38 (3) *The identity of the specific unit* ~~subscribed to~~
 39 *reserved* and the total deposit ~~subscription~~ for that unit.

40 ~~(3)~~

1 (4) Processing fee terms and conditions, including:

2 (A) The amount.

3 (B) A statement explaining the applicant's policy
4 regarding refund or retention of the processing fee in the
5 event of death of the ~~subscriber~~ *depositor* or voluntary
6 cancellation by the ~~subscriber~~ *depositor*.

7 (C) Notice that the processing fee shall be refunded
8 within 30 days, ~~in the event that if the applicant does not~~
9 ~~accept the subscriber is not accepted~~ *depositor* for
10 residency, or ~~if the applicant fails to construct the~~
11 ~~continuing care retirement community is not~~
12 ~~constructed by~~ *before* the estimated date of completion
13 and the department determines that there is no
14 satisfactory cause for the delay.

15 ~~(4)~~

16 (5) Requirements for payment of the deposit
17 ~~subscription by the subscriber~~ *depositor*.

18 ~~(5) Refund of the deposit subscription~~

19 (6) A statement informing the depositor that their
20 deposit payments will be converted to an entrance fee
21 payment at the time the continuing care contract is
22 executed.

23 (7) A statement informing the depositor that deposits
24 will be refunded within 30 calendar days of ~~notice~~ the
25 depositor's nonacceptance for residency or notice to the
26 applicant of the death of the ~~subscriber or his or her~~
27 ~~nonacceptance for residency~~ *depositor*.

28 ~~(6)~~

29 (8) A statement informing the depositor that all
30 deposits will be refunded to the depositors if the
31 continuing care retirement community is not
32 constructed by the estimated date of completion and the
33 department determines that there is no satisfactory cause
34 for the delay.

35 (9) ~~Refund~~—A statement informing the depositor that
36 a refund of the deposit ~~subscription~~ within 10 calendar
37 days of notice of ~~voluntary~~ cancellation by the ~~subscriber~~
38 ~~depositor. A statement~~ The deposit agreement shall state
39 that ~~once construction begins and~~ depositors who have
40 deposited more than one thousand dollars (\$1,000) or 5

1 percent of the entrance fee, whichever is greater; and
2 who have been notified that construction of the proposed
3 continuing care retirement community has commenced,
4 will not be entitled to a refund of their deposit until the
5 ~~continuing care retirement community is in operation~~
6 provisional certificate of authority is issued or, ~~refunds~~
7 ~~shall be made only~~ after ~~another subscriber~~ one of the
8 following occurs:

9 (A) Another depositor has reserved the canceling
10 depositor's specific residential unit and paid the
11 necessary ~~depositor subscription, or the subscriber~~
12 deposit.

13 (B) The depositor no longer meets financial or health
14 requirements for admission, ~~whichever occurs first.~~

15 (C) The applicant fails to meet the requirements of
16 Section 1786 or 1786.2.

17 ~~(7)–~~

18 (10) A statement to ~~subscribers~~ depositors that
19 specifies when funds may be released from escrow to the
20 applicant and explains that thereafter ~~subscriber~~ the
21 depositor's funds will not have escrow protection.

22 ~~(8)–~~

23 (11) A statement ~~regarding~~ advising the depositor
24 whether interest will be paid to the ~~subscriber~~ depositor
25 on ~~deposit subscription funds~~ deposits placed in ~~an~~ the
26 deposit escrow account.

27 (f) If cash equivalents are to be accepted in lieu of
28 cash, all of the following shall also be included in the
29 deposit agreement:

30 (1) A statement that cash equivalents that may be
31 accepted as deposits shall be either certificates of deposit
32 or United States securities with maturities of five years or
33 less.

34 (2) A statement that the instruments will be held by
35 the escrow agent in the form in which they were
36 delivered and assigned by the depositor until they are
37 replaced by cash or converted to cash.

38 (3) A statement that the depositor will be required to
39 assign the instruments to a neutral third-party escrow
40 agent. If the bank or entity that issued the instruments

1 refuses to allow this assignment, the escrow agent shall
2 not accept the instruments. These instruments shall be
3 reassigned to the depositor if the depositor terminates the
4 deposit agreement before the instruments mature. If the
5 depositor terminates the deposit agreement after the
6 instruments mature, the depositor shall receive a cash
7 refund of the portion of the deposit represented by the
8 matured instruments.

9 (4) A statement that any amount by which the face
10 value of the deposited instruments exceeds the required
11 deposit will be deemed part of the deposit and will be
12 applied against the depositor's obligations under the
13 deposit agreement.

14 (5) A statement that the instruments shall be
15 converted to, or replaced with, cash prior to the
16 department's authorization for the release of deposits to
17 the applicant. The depositor shall be advised that if the
18 depositor does not substitute cash in the amount equal to
19 the deposit, the applicant may do either of the following:

20 (A) Direct the escrow agent to sell, redeem, or
21 otherwise convert the instruments to cash and to treat the
22 proceeds in the same manner as it treats cash deposits
23 under the deposit agreement. The costs of any such sale,
24 redemption, or conversion, including, without limitation,
25 transaction fees and any early withdrawal penalties, may
26 be charged to the depositor and paid out of the cash or
27 other instruments received from the depositor in escrow.
28 If there is a shortfall, the depositor may be immediately
29 obligated to pay the shortfall by check jointly payable to
30 the applicant and the escrow agent.

31 (B) Terminate the deposit agreement. In this event,
32 the escrow agent shall reassign the property to the
33 depositor and refund all cash in escrow within the time
34 periods specified in the deposit agreement.

35 (g) A statement that deposits will be invested in
36 instruments guaranteed by the federal government or an
37 agency of the federal government, or in investment funds
38 secured by federally guaranteed instruments.

39 (h) A statement that no funds deposited in a deposit
40 escrow account will be subject to any liens, judgments,

garnishments, or creditor's claims against the applicant, the proposed continuing care retirement community property, or the continuing care retirement community. The deposit agreement shall also provide that deposits may not be subject to any liens or charges by the escrow agent, except that cash equivalent deposits may be subject to transactions fees, commissions, prepayment penalties, and other fees incurred in connection with these deposits.

(i) A schedule of projected monthly care fees estimated to be charged to residents for each of the first five years of the ~~facility's continuing care retirement community's~~ existence shall be attached to each deposit ~~subscription~~ agreement. ~~The~~ This schedule shall contain a conspicuous statement in at least 10-point boldface type that the projected fees are an estimate only and may be changed without notice.

SEC. 34. Section 1781 of the Health and Safety Code is amended to read:

1781. (a) All ~~deposit—subscriptions~~ deposits, excluding processing fees, shall be placed in an escrow account, ~~the terms of which must account.~~ All terms governing the deposit escrow account shall be approved in advance by the department.

(b) The ~~deposit~~ escrow account shall be established by an escrow agent and ~~the deposit subscription~~ all deposits shall be deposited in a depository located in California approved by the department ~~and located in California~~ and. ~~The funds deposited therein shall~~ The department's approval of the depository shall be based, in part, upon its ability to ensure the safety of funds and properties entrusted to it and its qualifications to perform the obligations of the depository pursuant to the deposit escrow account agreement and this chapter. The depository may be the same entity as the escrow agent. All deposits shall be kept and maintained in ~~an account~~ separate and apart from the applicant's business accounts a segregated account without any commingling with other funds, including any funds or accounts owned by the applicant.

1 (c) ~~The escrow agent may be the same entity as the~~
2 ~~depository.~~ If the escrow agent is a title company, it shall
3 meet the following requirements:

4 (1) A Standard and Poors rating of “A” or better or a
5 comparable rating from a comparable rating service.

6 (2) Licensure in good standing with the Department
7 of Insurance.

8 (3) Tangible net equity as required by the
9 Department of Insurance.

10 (4) Reserves as required by the Department of
11 Insurance.

12 (d) ~~Funds~~ *All deposits* shall remain in escrow until the
13 department has authorized ~~their~~ release ~~in accordance~~
14 ~~with of the deposits, as provided in Section 1783.2.~~

15 (e) ~~Deposit subscriptions~~ *Deposits* shall be invested in
16 instruments guaranteed by, ~~or agencies of,~~ the federal
17 government or ~~by an agency of the federal government,~~
18 *or in* investment funds secured by federally guaranteed
19 instruments.

20 (f) No funds deposited in ~~an~~ *a deposit* escrow account
21 shall be subject to any liens, judgments, garnishments, or
22 creditor’s claims against the applicant or *the* continuing
23 care retirement community. ~~Neither shall these funds~~
24 *The deposit agreement shall also provide that deposits*
25 *may not* be subject to any liens or charges by the escrow
26 agent; ~~except that cash equivalent deposits may be~~
27 *subject to* transaction fees, commissions, prepayment
28 penalties, and other fees incurred in connection with ~~the~~
29 ~~payment of cash equivalent deposit subscriptions those~~
30 *deposits.*

31 *SEC. 35. Section 1781.2 of the Health and Safety Code*
32 *is amended to read:*

33 1781.2. (a) ~~Payments~~ *— pursuant — to — deposit*
34 ~~subscriptions shall be deposited with~~ *All deposits shall be*
35 *delivered to* the escrow agent *and deposited into the*
36 *deposit escrow account* within five business days after
37 ~~their receipt from subscribers and shall by the applicant.~~
38 *The deposit escrow account shall be accounted for in a*
39 *separate escrow account.*

~~(b) Deposits shall be accompanied by~~ The applicant shall provide will all deposits delivered to the escrow holder a copy of the executed deposit ~~subscription~~ agreement, a copy of the receipt given to the ~~subscriber~~ depositor, a summary of all deposits made on that date, and any ~~requirement of~~ other materials required by the escrow holder.

SEC. 36. Section 1781.4 of the Health and Safety Code is amended to read:

1781.4. The ~~escrow~~ deposit escrow account agreement between the applicant and the escrow agent shall ~~provide~~ include provisions for all of the following:

(a) The amount of the processing fee.

~~(b) Deposit of funds in~~ A provision requiring that all deposits shall be placed into the deposit escrow account upon delivery.

~~(c) Monthly~~ A provision requiring that monthly progress reports, ~~beginning the month after the escrow account is opened and ending after funds are released from escrow,~~ to be sent by the escrow agent directly to the department, *beginning the month after the deposit escrow account is opened and continuing through the month funds are released from escrow.* These reports shall be prepared every month that there are any funds in the account and shall show each of the following in separate columns:

(1) The name and address of each ~~subscriber~~ depositor or resident.

(2) The designation of the living unit being provided.

(3) Any processing fee which is deposited into escrow.

(4) The total deposit ~~subscription~~ required for the unit.

(5) The total entrance fee for the unit.

(6) Twenty percent of the total entrance fee.

(7) Each *deposit* payment made ~~towards the deposit~~ or ~~refund given~~ by or on behalf of the depositor and any *refunds paid to the depositor.*

(8) The unpaid balance ~~of~~ for each ~~deposit~~ *subscription* depositor's deposit.

1 (9) The unpaid balance ~~of~~ for each depositor's
2 entrance fee.

3 (10) The current balance in the deposit escrow
4 account *for each depositor and the collective balance.*

5 (11) The dollar amount, type, and maturity date of any
6 cash equivalent *paid by each depositor.*

7 ~~(d) Investment—A provision for investment of escrow~~
8 ~~account funds in a manner consistent with Section 1781.~~

9 ~~(e) A provision for refunds to depositors in the manner~~
10 ~~specified by Section 1783.2.~~

11 ~~(f) A provision regarding the payment of interest~~
12 ~~earned on the funds held in escrow in the manner~~
13 ~~specified in the applicant's deposit agreement.~~

14 ~~(g) Release of deposit escrow account funds as in the~~
15 ~~manner specified in Section 1783.2 1783.3, including to~~
16 ~~whom payment of interest earned on such funds will be~~
17 ~~made.~~

18 ~~(f) The escrow agreement shall state that~~

19 ~~(h) Representations by the escrow agent for the~~
20 ~~proposed continuing care retirement community shall~~
21 ~~neither be a lender nor have fiduciary responsibilities to~~
22 ~~lenders or bondholders that it is not, and shall not be~~
23 ~~during the term of the deposit escrow account, a lender~~
24 ~~to the applicant or for the proposed continuing care~~
25 ~~retirement community, or a fiduciary for any lender or~~
26 ~~bondholder for that continuing care retirement~~
27 ~~community, unless approved by the department.~~

28 ~~(i) If cash equivalents may be accepted as a deposit in~~
29 ~~lieu of cash, the deposit escrow account agreement shall~~
30 ~~also include all of the following:~~

31 ~~(1) Authorization for the escrow agent to convert~~
32 ~~instruments to cash when they mature. The escrow agent~~
33 ~~may notify all financial institutions whose securities are~~
34 ~~held by the escrow agent that all interest and other~~
35 ~~payments due upon these instruments shall be paid to the~~
36 ~~escrow agent. The escrow agent shall collect, hold, invest,~~
37 ~~and disburse these funds as provided under the escrow~~
38 ~~agreement.~~

39 ~~(2) Authorization for the escrow agent to deliver the~~
40 ~~instruments in its possession and release funds from~~

1 escrow according to written directions from the
2 applicant, consistent with the terms provided in the
3 applicant's deposit escrow account agreement. The
4 escrow agent shall distribute cash and other property to
5 an individual depositor only upon either the subscriber's
6 written request to receive monthly payments of interest
7 accrued on his or her deposits, or receipt of notice from
8 the applicant to pay a refund to the depositor.

9 (3) A provision that the escrow agent shall maintain,
10 at all times, adequate records showing the beneficial
11 ownership of the instruments.

12 (4) A provision that the escrow agency shall have no
13 responsibility or authority to initiate any transfer of the
14 instruments or conduct any other transaction without
15 specific written instructions from the applicant.

16 (5) A provision authorizing, instructing, and directing
17 the escrow to do all of the following:

18 (A) Redeem and roll over matured investments into
19 money market accounts or other department approved
20 instruments with the escrow agent or an outside financial
21 institution.

22 (B) Collect and receive interest, principal, and other
23 things of value in connection with the instruments.

24 (C) Sign for the depositors any declarations, affidavits,
25 certificates, and other documents that may be required
26 to collect or receive payments or distributions with
27 respect to the instruments.

28 SEC. 37. Section 1781.6 of the Health and Safety Code
29 is amended to read:

30 1781.6. ~~Changes to deposit subscription~~ All changes to
31 a deposit agreement or deposit escrow account
32 agreement ~~forms form~~ shall ~~require prior approval by the~~
33 ~~department~~ be submitted to, and approved by, the
34 department before use by the applicant.

35 SEC. 38. Section 1781.8 of the Health and Safety Code
36 is amended to read:

37 1781.8. (a) ~~As instructed by the applicant, funds~~
38 ~~placed~~ Deposits held in escrow accounts ~~may be~~ shall be
39 placed in an interest bearing account or invested as
40 provided under subdivision ~~(d)~~ (e) of Section 1781.

1 (b) ~~Earnings shall~~ *Interest, income, and other gains*
2 *derived from deposits held in a deposit escrow account*
3 *may not be released or distributed from the deposit*
4 *escrow account except upon written approval of the*
5 *department.*

6 (c) Approval by the department ~~of~~ *for* the release of
7 *earnings generated from funds held in escrow shall be*
8 *based upon an assessment that funds remaining in the*
9 *deposit escrow account will be sufficient to pay refunds*
10 *and any interest promised, if any, to all subscribers, and*
11 *all depositors, as well as administrative costs owed to the*
12 *escrow agent administrative costs.*

13 (d) ~~Interest~~ *When released by the department,*
14 *interest earned by the funds in the deposit escrow*
15 *account shall be distributed in accordance with the terms*
16 *of the deposit subscription agreement.*

17 SEC. 39. Section 1781.10 of the Health and Safety
18 Code is amended to read:

19 1781.10. No ~~moneys~~ *deposit or any other*
20 ~~consideration, while~~ *asset held in a deposit escrow*
21 *account, shall be encumbered or used as collateral for any*
22 *obligation of the applicant or any other person, unless the*
23 *applicant obtains prior written approval from the*
24 *department for the encumbrance or use as collateral. The*
25 *department shall not approve any encumbrance or use as*
26 *collateral under this section unless the encumbrance or*
27 *use as collateral is subordinate expressly subordinated to*
28 *the rights of transferors for refunds depositors under this*
29 *chapter to refunds of their deposits.*

30 SEC. 40. Section 1782 of the Health and Safety Code
31 is amended to read:

32 1782. (a) An applicant shall not begin construction
33 *on any phase of a continuing care retirement community*
34 *without the first obtaining a written acknowledgment of*
35 *from the department that all of the following*
36 *prerequisites have been met:*

37 (1) A completed application has been submitted to the
38 department.

39 (2) A permit to ~~sell deposit subscriptions~~ *accept*
40 *deposits has been issued to the applicant or, in the case of*

1 continuing care retirement community renovation
2 projects, the department has issued a written approval of
3 the applicant's application.

4 (3) ~~At~~ For new continuing care retirement
5 communities, or construction projects adding new units
6 to an existing continuing care retirement community,
7 deposits equal to at least 20 percent of each depositor's
8 applicable entrance fee ~~has have~~ been ~~received~~ placed
9 into escrow for each phase for at least 50 percent of the
10 number of residential living units to be constructed.

11 (A) Paragraph (3) shall apply to all applications that
12 are submitted after May 31, 1995.

13 (B) ~~For applications, and for those phases of the~~
14 ~~project that were identified as part of applications,~~
15 ~~submitted on or before May 31, 1995, at least 20 percent~~
16 ~~of each applicable entrance fee shall be received for at~~
17 ~~least 60 percent of residential units projected to be~~
18 ~~occupied six months after the continuing care retirement~~
19 ~~community is opened for operation.~~

20 (b) Applicants shall notify ~~subscribers~~ depositors in
21 writing of the commencement of construction when
22 construction is commenced.

23 (c) For purposes of this chapter only, construction
24 shall not include site preparation ~~or~~, demolition, or the
25 construction of model units.

26 SEC. 41. Section 1783 of the Health and Safety Code
27 is amended to read:

28 1783. (a) ~~No building, which has been constructed by~~
29 ~~the applicant or related parties without prior written~~
30 ~~approval of the department for commencement of~~
31 ~~construction, shall be permitted to be converted to a~~
32 ~~continuing care retirement community until five years~~
33 ~~have elapsed from the completion of construction. This~~
34 ~~section shall not apply to expansions of existing~~
35 ~~continuing care retirement communities.~~

36 (b) ~~If~~ (1) An applicant proposing to convert an
37 existing buildings are to be converted to a building to
38 continuing care use, ~~the applicant~~ shall comply with all
39 the application requirements in Section 1779.4 identified
40 by the department as necessary for the department to

1 assess the feasibility of the proposed continuing care
2 retirement community as ~~determined by the department~~
3 ~~pursuant to Section 1779.4; provided, however, that the~~
4 ~~department may waive or modify the presales~~
5 ~~requirements of subparagraphs (A) and (B) of paragraph~~
6 ~~(1) of subdivision (a) of Section 1783.2 and paragraph (2)~~
7 ~~of subdivision (a) of Section 1786 if the facility is already~~
8 ~~occupied. This section shall not apply to expansions of~~
9 ~~existing continuing care retirement communities or~~
10 ~~conversion.~~

11 ~~(e)—~~

12 (2) *If the proposed continuing care retirement*
13 *community is already occupied and only a portion of the*
14 *existing residential units will be converted into*
15 *continuing care units, the department may modify the*
16 *presale requirements of paragraph (3) of subdivision (a)*
17 *of Section 1782 and paragraph (2) of subdivision (a) of*
18 *Section 1783.3.*

19 (b) ~~Any entity applying for conversion to a applicant~~
20 ~~proposing to convert an existing building into continuing~~
21 ~~care retirement community, unless qualified for a waiver~~
22 ~~or modification pursuant to subdivision (b), units shall~~
23 ~~indicate the portion of the facility to be used for~~
24 ~~continuing care—contracts contract services. The~~
25 ~~continuing care allocation specified by the applicant shall~~
26 ~~be reflected in all financial and marketing studies and~~
27 ~~shall be used to determine the percentages in meeting~~
28 ~~applicant's compliance with the percentage~~
29 ~~requirements of the deposit subscription period pursuant~~
30 ~~to subdivision (b) of Section 1783.2 and Section 1786~~
31 ~~stated in paragraph (3) of subdivision (a) of Section 1782~~
32 ~~and paragraph (2) of subdivision (a) of Section 1783.3.~~

33 SEC. 42. *Section 1783.2 of the Health and Safety Code*
34 *is amended to read:*

35 1783.2. (a) ~~Refunds to subscribers shall be disbursed~~
36 ~~as follows:~~

37 (1) ~~Except as provided in paragraph (2), the An~~
38 ~~escrow agent shall pay refunds refund to subscribers who~~
39 ~~cancel a deposit subscription agreement, upon written~~
40 ~~notice to the escrow agent from the applicant, in~~

~~accordance with the depositor all amounts required by the approved depositor's deposit-subscription agreement upon receiving written notice from the applicant that a depositor has canceled the deposit agreement. These refunds shall~~ Refunds required by this subdivision shall be paid to the depositor within 10 days after the subscriber depositor gives notice of cancellation to the applicant.

~~(2) After notice to subscribers of commencement of construction, a subscriber~~

(b) Depositors who have deposited more than one thousand dollars (\$1,000) or 5 percent of the entrance fee, whichever is greater, and who have been notified that construction of the proposed continuing care retirement community has commenced, shall not be entitled to a refund of their deposit-subscriptions until the any of the following occurs:

(1) The continuing care retirement community is opened for operation, ~~another subscriber operation.~~

(2) Another depositor has reserved the canceling depositor's specific residential unit and paid the necessary deposit-subscription, ~~or the subscriber deposit.~~

(3) The depositor no longer meets financial or health requirements for admission, ~~whichever occurs first.~~

~~(b) Releases to applicants shall be as follows:~~

~~(1) The applicant shall petition in writing to the department for the release of escrow, attesting to all of the following:~~

~~(A) The construction of the continuing care retirement community is at least 50 percent completed.~~

~~(B) At least 20 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any units for which a refund is pending cannot be counted towards that 60 percent requirement.~~

~~(C) All cash equivalent deposit subscriptions have been liquidated.~~

~~(D) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.~~

1 ~~(E) The applicant has received a commitment for any~~
2 ~~permanent mortgage loan or other long-term financing.~~

3 ~~(2) The department shall instruct the escrow agent to~~
4 ~~release to the applicant all deposit subscriptions which~~
5 ~~have been placed in escrow pursuant to Section 1784~~
6 ~~when all of the following requirements have been met:~~

7 ~~(A) The department has confirmed the information~~
8 ~~provided by the applicant pursuant to paragraph (1) of~~
9 ~~subdivision (b).~~

10 ~~(B) The department, in consultation with the~~
11 ~~Continuing Care Contracts Committee, has determined~~
12 ~~that there has been substantial compliance with~~
13 ~~projected annual financial statements, which served as a~~
14 ~~basis for issuance of the permit to sell deposit~~
15 ~~subscriptions.~~

16 ~~(C) The applicant has complied with all applicable~~
17 ~~licensing requirements in a timely manner.~~

18 ~~(D) The applicant has obtained a commitment for any~~
19 ~~permanent mortgage loan or other long-term financing~~
20 ~~that is satisfactory to the department.~~

21 ~~(E) The applicant has complied with any additional~~
22 ~~reasonable requirements for release of funds placed in~~
23 ~~escrow accounts, established by the department pursuant~~
24 ~~to Section 1785.~~

25 *SEC. 43. Section 1783.3 is added to the Health and*
26 *Safety Code, to read:*

27 *1783.3. (a) In order to seek a release of escrowed*
28 *funds, the applicant shall petition in writing to the*
29 *department and certify to each of the following:*

30 *(1) The construction of the proposed continuing care*
31 *retirement community or phase is at least 50 percent*
32 *completed.*

33 *(2) At least 20 percent of the total of each applicable*
34 *entrance fee has been received and placed in escrow for*
35 *at least 60 percent of the total number of residential living*
36 *units. Any unit for which a refund is pending may not be*
37 *counted toward that 60 percent requirement.*

38 *(3) Deposits made with cash equivalents have been*
39 *either converted into, or substituted with, cash or held for*
40 *transfer to the provider. A cash equivalent deposit may*

1 *be held for transfer to the provider, if all of the following*
2 *conditions exist:*

3 *(A) Conversion of the cash equivalent instrument*
4 *would result in a penalty or other substantial detriment*
5 *to the depositor.*

6 *(B) The provider and the depositor have a written*
7 *agreement stating that the cash equivalent will be*
8 *transferred to the provider, without conversion into cash,*
9 *when the deposit escrow is released to the provider under*
10 *this subdivision (a).*

11 *(C) The depositor is credited the amount of the cash*
12 *equivalent.*

13 *(4) The applicant's average performance over any*
14 *six-month period substantially equals or exceeds its*
15 *financial and marketing projections approved by the*
16 *department, for that period.*

17 *(5) The applicant has received a commitment for any*
18 *permanent mortgage loan or other long-term financing.*

19 *(b) The department shall instruct the escrow agent to*
20 *release to the applicant all deposits in the deposit escrow*
21 *account when all of the following requirements have*
22 *been met:*

23 *(1) The department has confirmed the information*
24 *provided by the applicant pursuant to subdivision (a).*

25 *(2) The department, in consultation with the*
26 *Continuing Care Advisory Committee, has determined*
27 *that there has been substantial compliance with*
28 *projected annual financial statements that served as a*
29 *basis for issuance of the permit to accept deposits.*

30 *(3) The applicant has complied with all applicable*
31 *licensing requirements in a timely manner.*

32 *(4) The applicant has obtained a commitment for any*
33 *permanent mortgage loan or other long-term financing*
34 *that is satisfactory to the department.*

35 *(5) The applicant has complied with any additional*
36 *reasonable requirements for release of funds placed in*
37 *the deposit escrow accounts, established by the*
38 *department under Section 1785.*

1 (c) The escrow agent shall release the funds held in
2 escrow to the applicant only when the department has
3 instructed it to do so in writing.

4 (d) When an application describes different phases of
5 construction that will be completed and commence
6 operating at different times, the department may apply
7 the 50 percent construction completion requirement to
8 any one or group of phases requested by the applicant,
9 provided the phase or group of phases is shown in the
10 applicant's projections to be economically viable.

11 SEC. 44. Section 1784 of the Health and Safety Code
12 is amended to read:

13 1784. (a) If construction of the proposed continuing
14 care retirement community, or applicable phase, has not
15 commenced within 36 months from the date the permit
16 to ~~sell deposit subscriptions~~ *accept deposits* is issued, an
17 applicant may request an extension of the permit to ~~sell~~
18 ~~deposit subscriptions~~ *accept deposits*. The request for
19 extension shall be made to the department in writing and
20 shall include the reasons why construction of the
21 proposed continuing care retirement community was not
22 commenced within the *required 36-month time period,*
23 ~~and period. The request for extension shall also state the~~
24 new estimated date for commencement of construction.

25 (b) In response to a request for an extension, the
26 department may do one of the following:

27 (1) If the department determines there is satisfactory
28 cause for the delay in commencement of construction of
29 the proposed continuing care retirement community *or*
30 *applicable phase*, the department may extend the permit
31 to ~~sell deposit subscriptions for a one-year period~~ *accept*
32 *deposits for up to one year.*

33 (2) If the department determines that there is no
34 satisfactory cause for the delay, the department may
35 instruct the escrow agent to refund to ~~subscribers~~
36 *depositors* all ~~deposit subscriptions~~ *deposits* held in
37 escrow, plus any interest due under the terms of the
38 deposit subscription agreements, and require the
39 applicant to file a new application and application fee.

1 *The applicant shall also refund all processing fees paid by*
2 *the depositors.*

3 (c) Within 10 calendar days the applicant shall notify
4 each ~~subscriber~~ *depositor* of the department's approval
5 or denial of the extension, of any expiration of the permit
6 to ~~sell deposit subscriptions~~, *accept deposits* and of any
7 right to a refund of their ~~deposit subscription~~ *deposits*.

8 *SEC. 45. Section 1785 of the Health and Safety Code*
9 *is amended to read:*

10 1785. (a) If, at any time prior to issuance of a
11 certificate of authority, the applicant's average
12 performance over any six-month period does not
13 substantially equal or exceed the applicant's projections
14 for that period, the department, after consultation and
15 upon consideration of the recommendations of the
16 Continuing Care ~~Contracts~~ *Advisory* Committee, may
17 take any of the following actions:

18 (1) Cancel the permit to ~~sell deposit subscriptions~~
19 *accept deposits and require that all funds in escrow be*
20 *returned to depositors immediately.*

21 (2) Increase the required percentages of construction
22 completed, units reserved, or entrance fees to be
23 deposited as required under Sections 1782, ~~1783.2~~ *1783.3*,
24 1786, and 1786.2.

25 (3) Increase the reserve requirements under this
26 chapter.

27 (b) Prior to taking any actions specified in subdivision
28 (a), the department shall give the applicant an
29 opportunity to submit a feasibility study from a consultant
30 in the area of continuing care, approved by the
31 department, to determine whether in his or her opinion
32 the proposed continuing care retirement community is
33 still viable, and if so, to submit a plan of correction. The
34 department, in consultation with the committee, shall
35 determine if the plan is acceptable.

36 (c) In making its determination, the department shall
37 take into consideration the overall performance of the
38 proposed continuing care retirement community to date.

39 (d) If ~~deposit subscriptions~~ *deposits* have been
40 released from escrow, the department may further

1 require the applicant to reopen the escrow as a condition
2 of receiving any further entrance fee payments from
3 ~~subscribers~~ depositors or residents.

4 (e) *The department may require the applicant to*
5 *notify all depositors and, if applicable, all residents, of any*
6 *actions required by the department under this section.*

7 SEC. 47. *Section 1786 of the Health and Safety Code*
8 *is amended to read:*

9 1786. (a) ~~In order to permit an applicant to become~~
10 ~~a provider and enter into continuing care contracts, the~~
11 *The department shall issue a provisional certificate of*
12 *authority when a provider an applicant has done all of the*
13 *following:*

14 (1) *Complied with the approved marketing plans.*

15 (2) *Met and continues to meet the requirements*
16 *imposed under subdivision—(b) (a) of Section 1783.2*
17 *1783.3. The issuance of the provisional certificate of*
18 *authority does shall not result in the automatic require,*
19 *and shall not be dependent upon the release of escrowed*
20 *funds—pursuant to. Release of escrowed funds shall be*
21 *governed by Section 1783.2 1783.3.*

22 (3) *Completed construction of the continuing care*
23 *retirement community or applicable phase.*

24 (4) *Obtained the required licenses.*

25 (5) *Paid the remainder of the application fees fee.*

26 (6) *Executed a permanent mortgage loan or other*
27 *long-term financing.*

28 (7) *Provided the department with a recorded copy of*
29 *the Notice of Statutory Limitation on Transfer required*
30 *by subdivision (aa) of Section 1779.4.*

31 (8) *Met all applicable provisions of this chapter.*

32 (b) *The provisional certificate of authority shall expire*
33 *12 months after issuance unless both of the following*
34 *occur:*

35 (1) ~~Sixty~~ *No later than 60 days prior to the expiration*
36 *of the provisional certificate of authority, the provider*
37 *petitions the department and demonstrates good cause*
38 *in writing for an extension of the provisional certificate of*
39 *authority.*

(2) ~~Upon a showing of good cause by the provider, the~~
 The department determines that the ~~applicant~~ provider
 is capable of meeting the requirements of Section 1786.2
 during the ~~period of extension period.~~

(c) ~~The length of the period of extension shall be~~
~~determined at the department's~~ department shall
 exercise its discretion to determine the length of the
 extension period.

(d) After the provisional certificate of authority is
 issued providers may continue to take deposits by
 modifying the deposit ~~subscription~~ agreement as
 appropriate. The new deposit agreement shall clearly
 state the rights of the depositor and the provider. ~~These~~
~~The applicant shall submit the~~ agreements shall be
 submitted to the department for review and approval
 prior to use. A provider that holds a provisional certificate
 of authority or certificate of authority may accept fees
 paid by potential residents to be placed on a waiting list
 without using a deposit agreement. These waiting list fees
 may not exceed five hundred dollars (\$500), and shall be
 refunded to the potential resident upon written request.

(e) All holders of a provisional certificate of authority
 shall request in writing a ~~final~~ certificate of authority
 when the requirements of Section 1786.2 have been met.

SEC. 48. Section 1786.2 of the Health and Safety Code
 is amended to read:

1786.2. (a) ~~A certificate of authority—The department~~
 shall not ~~be issued to~~ issue a certificate of authority to an
 applicant or a provider, ~~unless~~ until the department
 determines that ~~all~~ each of the following ~~have~~ has
 occurred:

(1) A provisional certificate of authority has been
 issued or all of the requirements for a provisional
 certificate of authority have been satisfied. In the case of
 an application for a new certificate of authority due to an
 organizational change, if the continuing care retirement
 community is financially sound and operating in
 compliance with this chapter, it shall be sufficient for the
 purposes of this paragraph that the department has
 approved the application in writing.

1 (2) One of the following requirements has been met:

2 (A) At a minimum, continuing care contracts have
3 been executed for 80 percent of the total residential living
4 units in the continuing care retirement community, with
5 payment in full of the entrance fee.

6 (B) At a minimum, continuing care contracts have
7 been executed for 70 percent of the total residential living
8 units in the continuing care retirement community, with
9 payment in full of the entrance fee, and the provider has
10 submitted a *an updated* financial and marketing plan,
11 satisfactory to the department, demonstrating that the
12 proposed continuing care retirement community will be
13 financially viable.

14 (C) At a minimum, continuing care contracts have
15 been executed for 50 percent of the total residential living
16 units in the continuing care retirement community, with
17 payment in full of the entrance fee, and the provider
18 furnishes and maintains a letter of credit or other security,
19 satisfactory to the department, sufficient to bring the
20 total amount of payments to a level equivalent to 80
21 percent of the total entrance fees for the entire
22 continuing care retirement community.

23 (3) A minimum five-year financial plan of operation
24 remains satisfactory to the department.

25 (4) Adequate reserves exist as required by Sections
26 1792.2 and 1793. For a new continuing care retirement
27 community without an operating history, the department
28 may approve calculation of required reserves on a pro
29 forma basis in conjunction with compliance with
30 approved marketing plans.

31 (5) All applicable provisions of this chapter have been
32 met.

33 (b) When issued, the certificate of authority, whether
34 full or conditioned, shall remain in full force unless
35 *forfeited by operation of law under Section 1793.7,*
36 *inactivated under Section 1793.8, or suspended;* or
37 revoked by the department pursuant to Section 1793.21.

38 (c) The *provider shall display the* certificate of
39 authority ~~shall be displayed~~ in a prominent place within
40 the continuing care retirement community.

SEC. 49. Section 1787 of the Health and Safety Code is amended to read:

1787. (a) All continuing care contracts ~~entered into between the provider and the transferor~~ shall be in writing and shall contain all *the* information required by Section 1788.

(b) All continuing care contract forms, *including all addenda, exhibits, ~~or~~ and any other related documents, and any revisions thereto, shall incorporated therein, as well as any modification to these items, shall* be approved by the department prior to their use.

(c) *The department shall approve continuing care contract forms that comply with this chapter. The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval by the department. To the extent that this chapter conflicts with Chapter 3.2 (commencing with Section 1569), this chapter shall prevail.*

~~The~~ (d) A continuing care contract *approved by the department* shall constitute the full and complete agreement between the parties.

(e) More than one continuing care contract form may be used *by a provider* if multiple program options are available.

(f) All text in continuing care contract forms shall be printed in at least 10-point typeface.

(g) A clearly legible copy of the continuing care contract, executed by ~~the each provider and a transferor, shall named on the provisional certificate of authority or the certificate of authority, the resident, and any transferor, shall~~ be furnished, with all required or included attachments to the ~~transferor resident~~ at the time the continuing care contract is executed ~~and shall~~. *A copy shall also be furnished within 10 calendar days to the resident if the resident is other than the transferor any transferor who is not a resident.*

(h) The provider shall require a written acknowledgment from the ~~transferor resident (and the resident, if other than the transferor any transferor who~~

1 *is not a resident*) that the executed copy of the continuing
2 care contract and attachments have been received.

3 (i) The continuing care contract shall ~~constitute~~ *be* an
4 admissions agreement for purposes of the residential care
5 facility for the elderly and long-term health care facility
6 requirements *and shall state the resident's entitlement to*
7 *receive these levels of care.* The continuing care contract
8 may state the entitlement for skilled nursing care in
9 accordance with the provisions of law governing
10 admissions to long-term health care facilities in effect at
11 the time of admission to the skilled nursing facility. The
12 parties may agree to the terms of nursing facility
13 admission at the time the continuing care contract is
14 executed, or the provider may present an exemplar of the
15 then-current nursing facility admission agreement and
16 require the resident to execute the form of agreement in
17 effect at the time of admission to the nursing facility.
18 ~~These~~ *The* terms shall include the nursing fee, or the
19 method of determining the fee, at the time of the
20 execution of the continuing care ~~agreement~~ *contract*, the
21 services included in and excluded from the fee, the
22 grounds for transfers and discharges, and any other terms
23 required to be included under ~~federal~~ *applicable* law.

24 (j) Only the skilled nursing admission agreement
25 sections of continuing care contracts which cover
26 long-term health care facility services ~~shall be~~ *are* subject
27 to Chapter 3.95 (commencing with Section 1599.60). The
28 provider ~~must~~ *shall* submit the proposed skilled nursing
29 admission agreement to the State Department of Health
30 Services for its review ~~and to the State Department of~~
31 ~~Social Services for review to determine that it is not in and~~
32 *approval under that department's rules and regulations.*
33 *The skilled nursing admission agreement submitted to*
34 *the department shall be reviewed for any violation of the*
35 *laws relating to continuing care contracts.*

36 *SEC. 50. Section 1788 of the Health and Safety Code*
37 *is amended to read:*

38 1788. (a) Any continuing care ~~contract~~ *contracts*
39 shall contain all of the following:

40 (1) The legal name and address of ~~the~~ *each* provider.

1 (2) The name and address of the continuing care
2 retirement community.

3 (3) The resident's name and ~~number~~ *the identity* of
4 the unit ~~to be occupied~~ *the resident will occupy*.

5 (4) If ~~there is a~~ transferor is ~~someone~~ other than
6 the resident, the *transferor shall be a party to the contract*
7 *and the transferor's name and address shall be separately*
8 *designated specified*.

9 (5) If the provider has used the name of any charitable
10 or religious or nonprofit organization in its title before
11 January 1, 1979, and continues to use that name, and that
12 organization is not responsible for the financial and
13 contractual obligations of the provider *or the obligations*
14 *specified in the continuing care contract*, the provider
15 shall include in every continuing care contract a
16 conspicuous statement which clearly informs the
17 ~~transferor resident~~ that the organization is not financially
18 responsible.

19 (6) The date the continuing care contract is signed by
20 the *resident and, where applicable, any other* transferor.

21 (7) The duration of the continuing care contract.

22 (8) A list of the ~~following~~ services that ~~are to~~ will be
23 made available to the resident, ~~which shall as required to~~
24 *provide the appropriate level of care. The list of services*
25 *shall include at a minimum, the following conditions for*
26 *services required as a condition for licensure as a*
27 *residential care facility for the elderly licensure,*
28 *including, but not limited to, all of the following:*

29 (A) Regular observation of the resident's health status
30 to ensure that his or her dietary needs, social needs, and
31 needs for special services are satisfied.

32 (B) Safe and healthful living accommodations,
33 including housekeeping services and utilities.

34 (C) Maintenance of house rules for the protection of
35 residents.

36 (D) A planned activities program, which includes
37 social and recreational activities appropriate to the
38 interests and capabilities of the resident.

1 (E) Three balanced, nutritious meals and snacks made
2 available daily, including special diets prescribed by a
3 physician as a medical necessity.

4 (F) ~~Personal care~~ *Assisted living services*.

5 (G) Assistance with taking medications.

6 (H) Central storing and distribution of medications.

7 (I) Arrangements to meet health needs, including
8 arranging transportation.

9 (9) An itemization of the services that are included in
10 the monthly fee and the services that are available at an
11 extra charge. The provider shall attach a current fee
12 schedule to the continuing care contract.

13 (10) The procedures and conditions under which
14 residents may be voluntarily ~~or~~ *and* involuntarily
15 transferred from their designated living units. The
16 transfer procedures, at a minimum, shall ~~provide for~~
17 *include provisions addressing all of the following*
18 *circumstances under which transfer may be authorized:*

19 (A) When, in the opinion of the continuing care
20 retirement community management, a physician—~~and~~
21 ~~surgeon~~, appropriate specialist, or licensing official *in*
22 *consultation with the resident and appropriate*
23 *representative, if any*, any of the following conditions
24 exists:

25 (i) The resident is nonambulatory. The definition of
26 ~~nonambulatory~~, “nonambulatory,” as ~~defined~~ *provided*
27 in Section 13131, shall either be stated *in full* in the
28 continuing care contract or be cited, ~~with~~. *If Section*
29 *13131 is cited*, a copy of ~~it~~ *the statute shall be made*
30 *available to the resident, either as an attachment to the*
31 *continuing care contract* or by specifying that it will be
32 provided upon request. ~~If the a nonambulatory resident~~
33 occupies a room that has a fire clearance for
34 nonambulatory residence, ~~provision for transfer under~~
35 ~~the above circumstances is unnecessary~~ *shall not be*
36 *necessary*.

37 (ii) ~~Resident~~—*The resident* develops a physical or
38 mental condition that endangers the health, safety, or
39 well-being of the resident or another person, or causes an

1 unreasonable and ongoing disturbance at the continuing
2 care retirement community.

3 (iii) ~~Transfer—The resident's condition or needs~~
4 ~~require the resident's transfer to the continuing care~~
5 ~~retirement community's skilled nursing facility or~~
6 ~~personal care an assisted living care unit is required or~~
7 ~~skilled nursing facility for more efficient care and/or or~~
8 to protect the health of other residents, or because the
9 level of care ~~needed cannot~~ *required by the resident*
10 *exceeds that which may be* lawfully be provided in the
11 living unit.

12 (iv) ~~Transfer—The resident's condition or needs~~
13 ~~require the resident's transfer to a nursing home or~~
14 ~~facility, hospital, or other facility is required, and the~~
15 provider has no facilities available ~~for such to provide that~~
16 level of care.

17 (B) ~~Provision for transfer—Transfer~~ of a second
18 resident when a shared accommodation arrangement is
19 terminated.

20 (C) ~~When transfer—Transfer~~ is requested or required,
21 by *the* provider or *the* resident, for any other reason.

22 (11) Provisions ~~for describing any change~~ *changes* in
23 the resident's monthly ~~rate fee~~ and any ~~refund of~~
24 ~~entrance fees when a~~ *changes in the entrance fee refund*
25 *payable to the resident that will occur if the* resident
26 transfers from any unit.

27 (12) ~~Any—The provider's continuing obligations of the~~
28 ~~provider if any, in the event a resident is transferred from~~
29 ~~the continuing care retirement community to another~~
30 ~~facility.~~

31 (13) ~~Whether the provider has any responsibility—The~~
32 ~~provider's obligations, if any, to resume care upon the~~
33 ~~resident's return after a temporary transfer from the~~
34 ~~continuing care retirement community.~~

35 (14) The provider's obligations ~~of the provider for~~
36 ~~continued to provide~~ services to the resident while the
37 resident is absent from the continuing care retirement
38 community.

39 (15) The conditions under which the resident *must*
40 permanently ~~releases~~ *release* his or her living unit.

1 (16) If real or personal properties are transferred in
2 lieu of cash, a statement ~~as to their~~ *specifying each item's*
3 value at the time of transfer, and how the value was
4 ascertained ~~shall be included~~.

5 (A) An itemized receipt which includes the
6 information described above is acceptable; if
7 incorporated as a part of the continuing care contract.

8 (B) ~~With respect to the transfer of~~ *When real*
9 *property; is or will be transferred, the continuing care*
10 *contract shall include* a statement that the deed or other
11 instrument of conveyance shall ~~contain a recital specify~~
12 that the ~~transaction~~ *real property is made conveyed*
13 pursuant to a ~~"continuing continuing care contract"~~
14 *contract* and may be subject to rescission by the
15 transferor within 90 days from the date ~~of the transfer that~~
16 *the resident first occupies the residential unit*.

17 (C) The failure to comply with paragraph (16) shall
18 not affect the validity of title to real property transferred
19 pursuant to this chapter.

20 (17) The amount of the entrance fee.

21 (18) In the event two parties have jointly paid the
22 entrance fee or other payment which allows them to
23 occupy the unit, the continuing care contract shall ~~define~~
24 ~~the allocation of fees~~ *describe how any refund of entrance*
25 *fees is allocated*.

26 (19) The amount of any processing fee.

27 (20) The amount of any monthly care fee.

28 (21) For continuing care contracts ~~which~~ *that* require
29 a monthly care fee or other periodic ~~rate~~ *payment*, the
30 continuing care contract shall ~~provide statements~~
31 ~~concerning all of~~ *include* the following:

32 (A) ~~That~~ *A statement that* the occupancy and use of
33 the accommodations by the resident is contingent upon
34 the regular payment of the fee.

35 (B) The regular rate of payment agreed upon (per
36 day, week, or month).

37 (C) ~~Whether~~ *A provision specifying whether*
38 payment will be made in advance or after services have
39 been provided.

~~(D) Whether any adjustment in the A provision specifying the provider will adjust monthly care fees is to be made by the provider for the resident's support, maintenance, board, or lodging, which is supplied to when a resident who requires medical attention when he or she is absent while away from the continuing care retirement community.~~

~~(E) If any A provision specifying whether a credit or allowance is to will be given to a resident who is absent from the continuing care retirement community or from meals, and if such. This provision shall also state, when applicable, that the credit is to may be permitted at the discretion or by special permission of the provider.~~

~~(22) All continuing care contracts shall specify one of the following basic methods for calculating changes in that include monthly care fees shall address changes in monthly care fees by including either of the following provisions:~~

~~(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:~~

~~(i) Fees shall not be subject to change during the lifetime of the agreement.~~

~~(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.~~

~~(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.~~

~~(B) For monthly fee continuing care contracts, except prepaid contracts, changes in monthly care fees shall be based on projected costs, prior year per capita costs, and economic indicators.~~

~~(23) The continuing care contract shall provide for notification of A provision requiring that the provider give written notice to the resident at least 30 days in advance of any change in the resident's monthly care fees or in the price or scope or price of any component of care or other services.~~

1 (24) ~~The continuing care contract shall include a~~ A
2 provision indicating whether the resident's rights under
3 the continuing care contract include any proprietary
4 interests in the assets of the provider or in the continuing
5 care retirement community, or both.

6 (25) ~~If there is a loan on the continuing care~~
7 ~~retirement community property, the continuing care~~
8 ~~contract shall advise residents that rights they is~~
9 ~~encumbered by a security interest that is senior to any~~
10 ~~claims the residents may have to enforce continuing care~~
11 ~~contracts, a provision shall advise the residents that any~~
12 ~~claims they may have under the continuing care contract~~
13 ~~are subordinate to the rights of the secured lender. For~~
14 ~~equity projects, the continuing care contract shall specify~~
15 ~~the type and extent of the equity interest and whether~~
16 ~~any entity holds a superior security interest.~~

17 (26) Notice that the living units are part of a
18 continuing care retirement community that is licensed as
19 a residential care facility for the elderly and, as ~~such a~~
20 ~~result~~, any duly authorized agent of the department may,
21 upon proper identification and upon stating the purpose
22 of his or her visit, enter and inspect the entire premises
23 at any time, without advance notice.

24 (27) A conspicuous statement, in at least 10-point
25 boldface type in immediate proximity to the space
26 reserved for the ~~signature~~ *signatures* of the *resident and,*
27 *if applicable, the* transferor, that provides as follows:
28 “You, the *resident or* transferor, may cancel the
29 transaction without cause at any time within 90 days from
30 the date ~~of this transaction~~ *you first occupy your living*
31 *unit.* See the attached notice of cancellation form for an
32 explanation of this right.”

33 (28) Notice that during the cancellation period, the
34 continuing care contract may be canceled *upon 30 days’*
35 *written notice* by the provider without cause, *or that the*
36 *provider waives this right.*

37 (29) The terms and conditions under which the
38 continuing care contract may be terminated after the
39 cancellation period by either party, including any health
40 or financial conditions.

(30) A statement that ~~involuntary termination of,~~
~~after the cancellation period, a provider may unilaterally~~
~~terminate the continuing care contract by the provider~~
~~after the cancellation period shall be only for only if the~~
~~provider has good and sufficient cause.~~

(A) Any continuing care contract containing a clause
that provides for ~~a resident to be evicted, or provides for~~
~~a continuing care contract to be canceled~~ *terminated* for
“just cause,” “good cause,” or other similar provision,
shall also include a provision that none of the following
activities by the resident, or on behalf of the resident,
constitutes “just cause,” “good cause,” or otherwise
activates the ~~eviction or cancellation~~ *termination*
provision:

(i) Filing or lodging a formal complaint with the
department or other appropriate authority.

(ii) Participation in an organization or affiliation of
residents, or other similar lawful activity.

(B) ~~No~~ *The provision required by this paragraph shall*
~~also state that the provider shall not discriminate or~~
~~retaliate in any manner against any resident of a~~
~~continuing care retirement community for contacting~~
~~the department, or any other state, county, or city~~
~~agency, or any elected or appointed government official~~
~~to file a complaint or for any other reason, or for~~
~~participation in a residents’ coalition organization or~~
~~association.~~

(C) Nothing in this ~~provision shall diminish~~ *paragraph*
~~diminishes~~ the provider’s ability to terminate the
continuing care contract for good and sufficient cause.

(31) A statement that at least 90 days’ written notice
~~to the resident is required for an involuntary a unilateral~~
~~termination of the continuing care contract by the~~
~~provider.~~

(32) A statement concerning the length of notice that
~~is required by a resident for the voluntary termination of~~
~~is required to give the provider to voluntarily terminate~~
the continuing care contract after the cancellation
period.

(33) The policy *or terms* for refunding any portion of the entrance fee, in the event of cancellation, termination, or death. *If the continuing care contract includes any provision for a refund of all or a part of the entrance fee, then it shall also specify the amount, if any, the resident has paid or will pay for upgrades, special features or modifications to the resident's unit, and state that, if the continuing care contract is cancelled or terminated by the provider, the provider shall amortize the specified amount at the same rate as the resident's entrance fee, and refund the unamortized balance to the resident at the same time the provider pays the resident's entrance fee refund.*

(34) The following notice at the bottom of the signatory page:

“NOTICE”

(date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (l) of Section 1771(j) ~~or 1771(w) of Chapter 10 of Division 2~~ 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by ~~Section 1787(b)~~ subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) ~~has complied with specific requirements of the statutes~~ has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is ~~neither~~ NOT a guaranty of performance ~~nor~~ or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract before signing. ~~You should and to seek financial and legal advice as needed before~~

1 signing.

2
3 (35) *The provider may not attempt to absolve itself in*
4 *the continuing care contract from liability for its*
5 *negligence by any statement to that effect, and shall*
6 *include the following statement in the contract: “Nothing*
7 *in this continuing care contract limits either the*
8 *provider’s obligation to provide adequate care and*
9 *supervision for the resident or any liability on the part of*
10 *the provider which may result from the provider’s failure*
11 *to provide this care and supervision.”*

12 (b) A life care contract shall also ~~include all of the~~
13 ~~following~~ provide that:

14 (1) ~~Provision to provide all~~ All levels of care, including
15 acute care and ~~physicians~~ physicians’ and surgeons’
16 services will be provided to a resident.

17 (2) ~~Provision to provide this care~~ Care will be
18 provided for the duration of the resident’s life ~~except for~~
19 ~~termination of~~ unless the life care contract is canceled or
20 terminated by the provider during the cancellation
21 period or after the cancellation period for good cause.

22 (3) ~~Provision to provide a~~ A comprehensive
23 continuum of care will be provided to the resident,
24 including skilled nursing, in a facility under the
25 ownership and supervision of the provider on, or adjacent
26 to, the continuing care retirement community premises.

27 (4) ~~Provision that no change will be made in the~~
28 ~~monthly~~ Monthly care fees will not be changed based on
29 the resident’s level of care or service.

30 (5) ~~Provision to subsidize residents~~ A resident who
31 ~~become~~ becomes financially unable to pay ~~their~~ his or her
32 monthly care fees shall be subsidized provided ~~that~~ the
33 resident’s financial need ~~did~~ does not arise from ~~the~~
34 action by the resident to divest ~~themselves of their~~ the
35 resident of his or her assets.

36 (c) ~~The continuing~~ Continuing care contract
37 contracts may include, ~~but is not limited to, and need not~~
38 ~~include~~, any of the following ~~items~~ provisions:

39 (1) ~~Provision for~~ To subsidize a resident who becomes
40 financially unable to pay for his or her monthly care fees

1 at some future date ~~to be subsidized~~. If ~~provision a~~
2 ~~continuing care contract provides~~ for subsidizing a
3 resident ~~is included, the following provisions may be~~
4 ~~included~~ it may also provide for any of the following:

5 (A) ~~A stipulation that the~~ The resident shall apply for
6 any public assistance or other aid for which ~~he or she is~~
7 eligible and that the provider may apply ~~for assistance~~ on
8 behalf of the resident.

9 (B) ~~A stipulation that the provider shall~~ The
10 ~~provider's decision shall be the~~ final and conclusive
11 ~~determining body of regarding~~ any adjustments to be
12 made or any action to be taken regarding any charitable
13 consideration ~~to be~~ extended to any of its residents.

14 (C) ~~Provision for the~~ The provider is entitled to
15 payment ~~or entitlement of~~ for the actual costs of care
16 ~~from out of~~ any property acquired by the resident
17 subsequent to the any adjustment, ~~as provided in~~
18 ~~subparagraph (B)~~ extended to the resident under
19 paragraph (1), or from any other property ~~not disclosed~~
20 ~~by~~ of the resident ~~at any time which the resident failed to~~
21 ~~disclose~~.

22 (D) ~~Provision that the~~ The provider may pay the
23 monthly premium of the resident's health insurance
24 coverage under ~~medicare~~ Medicare to ensure that ~~such~~
25 ~~those~~ payments will be made.

26 (E) ~~Provision that the~~ The provider may receive an
27 assignment from the resident of the right to apply for and
28 to receive such benefits, for and on behalf of the resident.

29 (F) ~~Provision that the~~ The provider is not responsible
30 for the costs of furnishing the resident with any services,
31 supplies, and medication, when reimbursement is
32 ~~reasonably~~ available from any governmental agency, ~~or~~
33 ~~any private insurance~~.

34 (G) Any refund due to the resident at the termination
35 of the continuing care contract may be offset by any prior
36 subsidy to the resident by the provider.

37 (2) ~~Provisions which~~ To limit responsibility for costs
38 associated with the treatment or medication of an ailment
39 or illness existing prior to the date of admission. In such
40 cases, the medical or surgical exceptions, as disclosed by

1 the medical entrance examination, shall be listed in the
2 continuing care contract or in ~~the~~ a medical report, ~~which~~
3 ~~may be~~ attached to and made a part of the continuing
4 care contract.

5 (3) Legal remedies which may be ~~applied in case~~
6 *available to the provider if the resident makes any*
7 material misrepresentation or omission pertaining to *the*
8 *resident's assets or health* ~~has been made by the resident.~~

9 (4) A clause which restricts transfer or assignments of
10 the resident's rights and privileges under a continuing
11 care contract ~~because of due to~~ the personal nature of the
12 continuing care contract.

13 (5) A clause for the protection of the ~~provider in~~
14 ~~instances where it may wish provider's ability~~ to waive
15 ~~any a resident's breach~~ of the terms or provisions of the
16 continuing care contract in specific instances ~~where the~~
17 ~~resident has breached the continuing care contract~~
18 without ~~relinquishment of~~ *relinquishing* its right to insist
19 upon *full* compliance by the resident with all ~~of the other~~
20 terms or provisions *in the contract*.

21 (6) ~~Provision for the reimbursement of~~ A *provision*
22 *that the resident shall reimburse the provider for any*
23 *uninsured loss or damage to the resident's unit, beyond*
24 *normal wear and tear suffered by the provider as the*
25 ~~result of, resulting from the resident's carelessness or~~
26 ~~negligence on the part of the resident.~~

27 (7) ~~Provision~~ A *provision* that the resident agrees to
28 observe *the* off-limit areas of the continuing care
29 retirement community as designated by the provider for
30 safety reasons. ~~However, the~~ The provider ~~shall~~ *may* not
31 ~~attempt to absolve itself~~ *include any provision in the a*
32 continuing care contract *that absolves the provider from*
33 liability for its negligence ~~by any statement to that effect.~~

34 (8) ~~Provision~~ A *provision* for the subrogation to the
35 provider of the resident's rights in the case of injury to a
36 resident caused by the acts or omissions of a third party,
37 or for the assignment of the resident's recovery or
38 benefits in this case to the provider, to the extent of the
39 value of the goods and services furnished by the provider
40 to or on behalf of the resident *as a result of the injury*.

1 (9) ~~Provision~~—A *provision* for a lien on any judgment,
2 settlement, or recovery for any additional expense
3 incurred by the provider in caring for the resident as a
4 result of injury.

5 (10) ~~Provision~~—A *provision* that requires the *resident's*
6 cooperation ~~of the resident in assisting and assistance~~ in
7 the diligent prosecution of any claim or action against any
8 third party.

9 (11) ~~Provision~~—A *provision* for the appointment of a
10 conservator or guardian by a court ~~of competent with~~
11 jurisdiction in the event a resident becomes unable to
12 handle his or her personal or financial affairs.

13 (12) ~~Provision that, in the event~~—A *provision to allow*
14 a provider, whose property is tax exempt ~~is required to~~
15 ~~pay, to charge the resident on a pro rata basis~~ property
16 taxes, or in-lieu taxes, the ~~additional costs will be charged~~
17 ~~to the resident on a pro rata basis~~ *provider is required to*
18 *pay*.

19 (13) ~~Other provisions~~—Any *other provision* approved
20 by the department.

21 (d) ~~(1)~~—A copy of the resident's ~~bill of~~ rights as
22 described in Section ~~1771.5~~ 1771.7 shall be attached to
23 every continuing care contract.

24 ~~(2)~~—
25 (e) A copy of the current audited financial statement
26 of the provider shall be attached to every continuing care
27 contract. For a provider whose current audited financial
28 statement does not accurately reflect the financial ability
29 of the provider to fulfill the continuing care contract
30 ~~promises, this requirement obligations, the financial~~
31 ~~statement attached to the continuing care contract~~ shall
32 include ~~supplemental statements or attachments that~~
33 ~~disclose~~ all of the following:

34 ~~(A) That~~

35 (1) A *disclosure* that the reserve requirement has not
36 yet been determined or met, and that entrance fees will
37 not be held in escrow.

38 ~~(B) That~~

1 (2) A disclosure that the ability to provide the services
2 promised in the continuing care contract will depend on
3 successful compliance with the approved financial plan.

4 ~~(C) The~~

5 (3) A copy of the approved financial plan for meeting
6 the reserve requirements.

7 ~~(e)–~~

8 (4) Any other supplemental statements or
9 attachments necessary to accurately represent the
10 provider's financial ability to fulfill its continuing care
11 contract obligations.

12 (f) A schedule of the average monthly care fees for
13 ~~each type of residential living unit~~ charged to residents
14 for each type of residential living unit for each of the five
15 years preceding execution of the continuing care
16 contract shall be attached to every continuing care
17 contract. ~~This~~ The provider shall update this schedule
18 ~~shall be updated~~ annually at the end of each fiscal year.
19 If the continuing care retirement community has not
20 been in existence for five years, the information shall be
21 provided for each of the years the continuing care
22 retirement community has been in existence.

23 ~~(f)–~~

24 (g) If any continuing care contract provides for a
25 health insurance policy for the benefit of the resident, ~~the~~
26 provider shall attach to the continuing care contract a
27 binder ~~under~~ complying with Sections 382 and 382.5 of
28 the Insurance Code ~~shall be attached to the continuing~~
29 ~~care contract.~~

30 ~~(g)–A~~

31 (h) The provider shall attach to every continuing care
32 contract a completed form in duplicate, captioned
33 “Notice of Cancellation” ~~shall be attached to every~~
34 ~~continuing care contract. Such notice Cancellation.”~~ The
35 – form shall be easily detachable, and shall contain, in at
36 least 10-point boldface type, the following statement:
37

98

1 I hereby cancel this
2 transaction

3 ~~(Transferor's signature)~~
4 (Resident or
5 transferor's signature)"
6

7 SEC. 51. Section 1788.2 of the Health and Safety Code
8 is amended to read:

9 1788.2. (a) ~~The~~ A continuing care contract may be
10 canceled without cause by written notice from either
11 party; within 90 days from the date of the ~~transaction~~
12 *resident's initial occupancy*.

13 (b) For ~~both equity and nonequity projects~~ all
14 *continuing care contracts*, death of the resident *before or*
15 *during the cancellation period* shall constitute a
16 cancellation of the continuing care contract under
17 subdivision (a), unless ~~a~~ *the* continuing care contract
18 includes specific provisions otherwise.

19 (c) The cancellation period and the *associated* refund
20 ~~of obligations associated therewith~~ shall apply as follows:

21 (1) To all *executed* continuing care contracts ~~executed~~
22 ~~in conjunction with on equity continuing care retirement~~
23 ~~communities regarding a unit in a continuing care~~
24 ~~retirement community that is not an equity continuing~~
25 ~~care retirement community~~.

26 (2) To continuing care contracts executed in
27 conjunction with a purchase of an equity interest from a
28 provider but not to continuing care contracts executed in
29 conjunction with sales of an equity interest by one
30 ~~transferor~~ *resident* to another.

31 (d) The following fees may be charged *before or*
32 *during the 90-day cancellation period*:

33 (1) If possession of the living unit in a ~~nonequity~~
34 ~~project~~ *continuing care retirement community that is*
35 *not an equity continuing care retirement community* is
36 returned to the provider in substantially the same
37 condition as when received, the *resident's only obligation*
38 ~~incurred by the resident obligations~~ shall be *to pay a*
39 *reasonable fee to cover costs and to pay the reasonable*

1 value of services rendered pursuant to the canceled
2 continuing care contract.

3 (2) Equity project providers may impose a ~~transfer~~
4 *resale* fee on sellers. For contracts entered into after
5 January 1, 1996, ~~those transfer fees are subject to the~~
6 ~~following limitations:~~

7 ~~(A) Upon~~ *upon* the cancellation of a continuing care
8 contract executed in conjunction with the purchase of an
9 equity interest from the provider, the provider may
10 charge a ~~transfer~~ *resale* fee not to exceed the excess of the
11 gross resale price of the equity interest over the purchase
12 price paid by the ~~transferor for the interest~~ *resident or on*
13 *behalf of the resident for the interest.*

14 ~~(B) Upon the cancellation of a continuing care~~
15 ~~contract that is not executed in conjunction with the~~
16 ~~purchase of an equity interest from the provider, the~~
17 ~~transfer fee shall be no greater than the sum of 10 percent~~
18 ~~of either the original or resale price of the equity interest~~
19 ~~and 100 percent of the excess, if any, of the gross resale~~
20 ~~price of the equity interest over the purchase price paid~~
21 ~~by the transfer for the interest.~~

22 ~~(c) Upon the termination of a continuing care~~
23 ~~contract that occurs more than 90 days after the purchase~~
24 ~~of the equity interest from the provider, the transfer~~ *No*
25 *resale* fee shall ~~be no greater than~~ *exceed* the sum of 10
26 percent of either the original or resale price of the equity
27 interest and 100 percent of the excess if any, of the gross
28 resale price of the equity interest over the purchase price
29 paid by the ~~transferor~~ *resident or on behalf of the resident*
30 *for the interest if either of the following applies:*

31 *(1) The continuing care contract involved the*
32 *purchase of an equity interest from the provider and is*
33 *terminated after the cancellation period.*

34 *(2) The continuing care contract involved the*
35 *purchase of an equity interest from another resident and*
36 *is terminated at any time.*

37 (f) For purposes of this section, “gross resale price”
38 means the resale price before any deductions for ~~transfer~~
39 *resale* fees, transfer taxes, real estate commissions,

1 periodic fees, late charges, interest, escrow fees, or any
2 other fees incidental to the sale of real property.

3 (g) This section ~~shall~~ may not be construed to limit the
4 provider's ability to withhold delinquent periodic fees,
5 late charges, accrued interest, or assessments from the
6 sale proceeds, as provided by the continuing care
7 contract or the real estate documents governing the
8 equity ~~facility~~ continuing care retirement community.

9 SEC. 52. Section 1788.4 of the Health and Safety Code
10 is amended to read:

11 1788.4. (a) ~~Except during~~ During the cancellation
12 period ~~any~~, the provider shall pay all refunds due
13 ~~pursuant to the continuing care contract shall be paid~~
14 owed to a resident within 14 calendar days after a resident
15 makes possession of the living unit available to the
16 provider;.

17 (b) After the cancellation period, any refunds due to
18 a resident under a continuing care contract shall be paid
19 within 14 calendar days after a resident makes possession
20 of the living unit available to the provider or ~~within~~ 90
21 calendar days after ~~cancellation~~, death; or receipt of
22 notice of termination, whichever is later.

23 ~~(b)~~

24 (c) In nonequity projects, if the ~~provider terminates~~
25 the continuing care contract is canceled by either party
26 during the cancellation period or terminated by the
27 provider after the cancellation period, the ~~transferor~~
28 ~~shall~~ resident shall be refunded the difference between
29 the total amount of entrance, monthly, and optional fees
30 paid and the amount used for care of the resident.

31 ~~(c)~~ When

32 (d) If a resident has paid additional fees ~~have been~~
33 paid amounts for ~~unit~~ upgrades, these charges shall
34 amortize at the same rate as the entrance fee. The
35 ~~transferor shall be refunded~~ special features, or
36 modifications to the living unit and the provider
37 terminates the resident's continuing care contract, the
38 provider shall amortize those additional amounts at the
39 same rate as the entrance fee and shall refund the
40 unamortized balance to the resident.

1 (e) A lump sum payment to a resident after
2 termination of a continuing care contract that is
3 conditioned upon resale of a unit shall not be considered
4 to be a refund and may not be characterized or advertised
5 as a refund. The lump sum payment shall be paid to the
6 resident within 14 calendar days after resale of the unit.

7 SEC. 53. Section 1789 of the Health and Safety Code
8 is amended to read:

9 1789. (a) ~~Proposed changes of entity name,~~
10 ~~structure, organization, operation, overall management~~
11 ~~of the continuing care retirement community, or~~
12 ~~financing shall be submitted to the department for~~
13 ~~review and approval.~~ A provider shall notify the
14 department and obtain its approval before making any
15 changes to any of the following: its name; its business
16 structure or form of doing business; the overall
17 management of its continuing care retirement
18 community; or the terms of its financing.

19 (b) The provider shall give written notice of proposed
20 changes to the department ~~no less than~~ at least 60
21 calendar days ~~prior to~~ in advance of making the changes
22 described in this section.

23 (c) This notice requirement does not apply to routine
24 facility staff changes.

25 (d) Within 10 calendar days of submitting notification
26 to the department of any proposed changes under
27 subdivision (a), the provider shall notify the resident
28 association of the proposed changes in the manner
29 required by subdivision (e) of Section 1779.

30 SEC. 54. Section 1789.2 of the Health and Safety Code
31 is amended to read:

32 1789.2. (a) ~~Any~~ A provider ~~contemplating capital~~
33 ~~financing that would entail a mortgage or deed of trust for~~
34 ~~any property on which a resident resides pursuant to a~~
35 ~~continuing care contract~~ shall provide the department
36 with written ~~notification~~ notice at least 90 calendar days
37 prior to the execution of the proposed closing any
38 transaction ~~which includes all of the following:~~ that results
39 in an encumbrance or lien on a continuing care
40 retirement community property or its revenues.

1 *(b) The written notice required by this section shall*
2 *include all of the following:*

3 (1) A description of the terms and amount of the
4 proposed transaction.

5 (2) An analysis of the sources of funds for repayment
6 of principal and interest.

7 (3) An analysis of the impact of the proposed
8 transaction on monthly care fees.

9 (4) An analysis of the impact that the ~~contemplated~~
10 ~~proposed encumbrance of real property~~ would have on
11 assets available for statutory reserves required by Section
12 1792.2, and refund reserves required by Section 1793.

13 ~~(b) No provider~~

14 (c) *Within seven calendar days of receipt of notice of*
15 *proposed changes, the department shall acknowledge*
16 *receipt of the notice in writing.*

17 (d) *Within 30 calendar days following its receipt of the*
18 *notice, the department shall inform the provider in*
19 *writing whether additional materials are required to*
20 *evaluate the transaction.*

21 (e) *Within 90 calendar days following its receipt of*
22 *additional materials, the department shall inform the*
23 *provider of its approval or denial of the proposed*
24 *transaction.*

25 (f) *Providers shall not execute the proposed capital*
26 *financial—transactions transaction for which notice has*
27 *been given pursuant to subdivision (a) without the*
28 *department's written authorization or—until unless either*
29 *the 30-day response period or the 90 calendar day period*
30 *for—departmental the department's review of the*
31 *provider's request has expired without any response by*
32 *the department.*

33 ~~(e)–~~

34 (g) *If the department determines that the proposed*
35 *capital financial transaction will materially increase*
36 *monthly care fees or impair the provider's ability to*
37 *maintain required reserves, the department may refuse:*

38 (1) *Refuse to approve the transaction, may record.*

39 (2) *Record a notice of lien on the provider's property*
40 *pursuant to Section 1793.15, after notifying the provider*

1 and giving the provider an opportunity to withdraw the
2 planned transaction, ~~or take~~.

3 (3) ~~Take both actions and~~ any other action that it
4 determines ~~to be in~~ is necessary to protect the best
5 interest of the residents.

6 (h) *Within 10 calendar days of submitting notification*
7 *to the department of any proposed encumbrance to the*
8 *community property, the provider shall notify the*
9 *resident governing body or association of the proposed*
10 *encumbrance in the manner required by subdivision (e)*
11 *of Section 1779.*

12 SEC. 55. *Section 1789.4 of the Health and Safety Code*
13 *is amended to read:*

14 1789.4. (a) ~~Any~~ A provider ~~who proposes to sell or~~
15 ~~transfer ownership of~~ for a continuing care retirement
16 community ~~to another party~~ shall obtain approval from
17 the department before consummating ~~the~~ any sale or
18 transfer of the continuing care retirement community or
19 any interest in that community, other than sale of an
20 equity interest in a unit to a resident or other transferor.

21 (b) The provider shall ~~submit~~ provide written
22 ~~notification~~ notice to the department at least ~~90~~ 120
23 calendar days prior to ~~execution of~~ consummating the
24 proposed transaction. ~~The notification shall~~

25 (c) *The notice required by this section shall include all*
26 *of the following:*

27 (1) ~~Identification~~—*The identity of the proposed*
28 *purchaser.*

29 (2) A description of the terms ~~and amount of~~ of the
30 transfer or sale, including the ~~proposed transaction~~ sales
31 price.

32 (3) A plan ~~detailing how fulfillment of~~ for ensuring
33 performance of the existing continuing care contract
34 obligations ~~will be ensured~~.

35 (e) —

36 (d) The provider shall give written notice to all
37 continuing care contract residents and ~~subscribers~~ 60
38 ~~depositors~~ 120 calendar days prior to the sale or transfer.
39 The notice shall ~~include~~ do all of the following:

40 (1) ~~A description of~~ Describe the parties.

1 (2) ~~A description of~~ *Describe* the proposed sale or
2 transfer.

3 (3) ~~A description of~~ *Describe* the arrangements for
4 fulfilling continuing care contract obligations.

5 (4) ~~A description of~~ *Describe* options available to any
6 subscriber depositor or resident who does not wish to
7 have his or her contract assumed by a new provider.

8 (5) ~~An~~ *Include an* acknowledgment of receipt of the
9 notice to be signed by the resident.

10 (d) ~~In the absence of the substitution of a new legal~~
11 ~~obligor for the~~

12 (e) *Unless a new provider assumes all of the*
13 *continuing care obligations of the selling provider at the*
14 *close of the sale or transfer, the selling provider shall set*
15 *up a trust fund or secure a performance bond to ensure*
16 *the fulfillment of all its continuing care contract*
17 *obligations.*

18 (e) ~~—~~

19 (f) The ~~new owner purchaser~~ shall make applications
20 for, and obtain, ~~the appropriate licenses and~~ a certificate
21 of authority ~~and appropriate licenses,~~ before executing
22 any continuing care contracts, ~~or providing care or~~
23 ~~supervision, or both, to any residents or assuming the~~
24 ~~selling provider's continuing care contract obligations.~~

25 SEC. 56. Section 1789.6 of the Health and Safety Code
26 is amended to read:

27 1789.6. ~~All providers~~ *A provider* shall record ~~and~~
28 ~~maintain~~ *with the county recorder* a “Notice of Statutory
29 Limitation on Transfer” *for each community* as required
30 by paragraph (24) (1) of subdivision (a) (aa) of Section
31 1779.4 and Section 1786.

32 SEC. 57. Section 1789.8 of the Health and Safety Code
33 is amended to read:

34 1789.8. Each provider shall obtain and maintain in
35 effect insurance or a fidelity bond for ~~any~~ *each* agent or
36 employee, who, in the course of his or her agency or
37 employment, has access to any substantial amount of
38 funds. This requirement is separate from the bonding
39 requirements of ~~Residential Care Facility~~ *residential care*
40 *facility* for the ~~Elderly~~ *elderly* regulations.

1 SEC. 58. Section 1793.5 of the Health and Safety Code
2 is amended to read:

3 1793.5. (a) ~~Any~~—An entity that ~~sells—deposit~~
4 ~~subscriptions—proposing~~ *accepts deposits and proposes* to
5 promise to provide care without having a current and
6 valid permit to ~~sell—deposit—subscriptions~~ *accept deposits*
7 is guilty of a misdemeanor.

8 (b) ~~Any~~—An entity ~~which—sells—deposit—subscriptions~~
9 *that accepts deposits* and fails to place any ~~consideration~~
10 *deposit* received into an escrow account ~~pursuant to as~~
11 *required by* this chapter is guilty of a misdemeanor.

12 (c) ~~Any~~—An entity ~~which~~ *that* executes a continuing
13 care contract without holding a current and valid
14 provisional *certificate of authority* or ~~final~~ certificate of
15 authority is guilty of a misdemeanor.

16 (d) ~~Any~~—An entity that abandons ~~the~~ *a* continuing care
17 retirement community or ~~the—entity's~~ *its* obligations
18 under a continuing care contract, ~~pursuant to subdivision~~
19 ~~(f)~~, is guilty of a misdemeanor. ~~Any~~ *An* entity ~~in—violation~~
20 ~~of that violates~~ this section shall be liable to the injured
21 resident for treble the amount of damages assessed in any
22 civil action brought by or on behalf of the resident in any
23 court having proper jurisdiction. The court may, in its
24 discretion, award all costs and attorney fees to the injured
25 resident, if that resident prevails in the action.

26 (e) Each violation of subdivision (a), (b), (c), or (d)
27 is subject to a fine not to exceed ten thousand dollars
28 (\$10,000), or by imprisonment in the county jail for a
29 period not to exceed one year, or by both ~~the fine and~~
30 ~~imprisonment~~.

31 (f) ~~Any~~—An entity that issues, delivers, or publishes, or
32 as manager or officer or in any other administrative
33 capacity, assists in the issuance, delivery, or publication of
34 any printed matter, oral representation, or advertising
35 material which does not ~~conform to~~ *comply with* the
36 requirements of this ~~section~~ *chapter* is guilty of a
37 misdemeanor.

38 (g) ~~Any~~—A violation of subdivision (f) ~~shall~~ *by an entity*
39 *will* constitute cause for the suspension of all and any
40 licenses, permits, provisional certificates of authority, and

1 certificates of authority issued to ~~such~~ *that* entity by any
2 agency of the state.

3 (h) ~~Any~~ A violation under this section ~~shall be~~ *is* an act
4 of unfair competition as defined in Section 17200 of the
5 Business and Professions Code.

6 *SEC. 59. Section 1793.6 of the Health and Safety Code*
7 *is amended to read:*

8 1793.6. (a) The department may issue citations
9 pursuant to this section containing orders of abatement
10 and assessing civil penalties against any entity ~~who~~ *that*
11 violates Section 1771.2 or 1793.5.

12 (b) If upon inspection or investigation, the
13 department has probable cause to believe that an entity
14 is violating Section 1771.2 or 1793.5, the department may
15 issue a citation to that entity. Each citation shall be in
16 writing and shall describe with particularity the basis of
17 the citation. Each citation shall contain an order of
18 abatement. In addition to the administrative fines
19 *imposed* pursuant to Section 1793.27, ~~a provider in~~
20 ~~violation of an entity that violates~~ the abatement order
21 shall be liable for ~~an assessment of~~ a civil penalty in the
22 amount of two hundred dollars (\$200) per day for
23 violation of the abatement order.

24 (c) The civil penalty authorized in subdivision (b)
25 shall be imposed if ~~an uncertified facility~~ *a continuing*
26 *care retirement community* is operated *without a*
27 *provisional certificate of authority or certificate of*
28 *authority* and the operator refuses to seek a certificate of
29 authority or the operator seeks a certificate of authority
30 and the application is denied and the operator continues
31 to operate the ~~uncertified facility~~ *continuing care*
32 *retirement community without a provisional certificate*
33 *of authority or certificate of authority*, unless other
34 remedies available to the department, including
35 prosecution, are deemed more ~~effective~~ *appropriate* by
36 the department.

37 (d) Service of a citation issued under this section may
38 be made by certified mail at the last known business
39 address or residence address of the entity cited.

1 ~~(e) Any entity served with~~ Within 15 days after
2 service of a citation under this section, ~~an entity~~ may
3 appeal ~~in writing~~ to the department ~~in writing within 15~~
4 ~~working days after service of the citation~~ with respect to
5 the violations alleged, the scope of the order of
6 abatement, or the amount of civil penalty assessed.

7 (f) If the entity cited fails without good cause to appeal
8 in writing to the department ~~in writing~~ within 15 business
9 days after service of the citation, the citation shall become
10 a final order of the department. The department may
11 extend the 15-day period for good cause, to a maximum
12 of 15 additional days.

13 (g) If the entity cited under this section makes a timely
14 appeal of the citation, the department shall provide an
15 opportunity for a hearing. The department shall
16 thereafter issue a decision, based on findings of fact,
17 affirming, modifying, or vacating the citation or directing
18 other appropriate relief. The proceedings under this
19 section shall be conducted in accordance with the
20 provisions of Chapter 5 (commencing with Section
21 11500) of Part 1 of Division 3 of Title 2 of the Government
22 Code, and the department shall have all the powers
23 granted therein.

24 (h) After exhaustion of the review procedures
25 specified in this section, the department may apply to the
26 appropriate superior court for a judgment in the amount
27 of the civil penalty and an order compelling the cited
28 entity to comply with the order of abatement. The
29 application, which shall include a certified copy of the
30 final order of the department shall be served upon the
31 cited entity who shall have five business days ~~within~~
32 ~~which~~ to file that entity's response in writing in the
33 superior court, ~~this~~. This period may be extended for
34 good cause. Failure on the part of the cited entity to ~~so~~
35 respond shall constitute grounds for entry of a default
36 judgment against that entity. In the event a response is
37 timely filed in superior court, the action shall have
38 priority for trial over all other civil matters.

39 (i) Notwithstanding any other provision of law, the
40 department may waive part or all of the civil penalty if

1 the entity against whom the civil penalty is assessed
2 satisfactorily completes all the requirements for, and is
3 issued, a *provisional certificate of authority or* certificate
4 of authority.

5 (j) Civil penalties recovered pursuant to this section
6 shall be deposited into the Continuing Care Provider Fee
7 Fund.

8 *SEC. 60. Section 1793.7 of the Health and Safety Code*
9 *is amended to read:*

10 1793.7. A permit to ~~sell deposit subscriptions accept~~
11 *deposits*, a provisional certificate of authority, or a
12 certificate of authority shall be *for a continuing care*
13 *retirement community* forfeited by operation of law
14 when any one of the following occurs:

15 (a) The applicant ~~has notified the department that~~
16 *terminates* marketing ~~of~~ *for* the proposed continuing care
17 retirement community ~~has been terminated~~.

18 (b) The applicant or provider surrenders *to the*
19 *department its residential care facility for the elderly*
20 *license*, the permit to ~~sell deposit subscriptions accept~~
21 *deposits*, provisional certificate of authority, or certificate
22 of authority ~~to the department~~ *for a continuing care*
23 *retirement community*.

24 (c) The applicant or provider sells or otherwise
25 transfers all or part of the continuing care retirement
26 community.

27 (d) ~~The applicant or provider transfers stock where~~
28 ~~the transfer results in a~~ *A change occurs in the majority*
29 ~~change in~~ ownership of the continuing care retirement
30 community or the certificate of authority holder.

31 (e) *The applicant or provider merges with another*
32 *entity*.

33 (f) *The applicant or entity makes a material change in*
34 *a pending application which requires a new application*
35 *pursuant to subdivision (c) of Section 1779.8.*

36 (g) The applicant or provider moves the continuing
37 care retirement community from one location to another
38 without the department's prior approval.

39 ~~(f)~~

1 (h) The applicant or provider abandons the
2 continuing care retirement community or its obligations
3 under the continuing care contracts.

4 ~~(g)–~~

5 (i) The applicant or provider is evicted from the
6 continuing care retirement community premises.

7 SEC. 61. Section 1793.8 of the Health and Safety Code
8 is amended to read:

9 1793.8. A Certificate of Authority shall be
10 automatically inactivated when a provider voluntarily
11 ceases to enter into continuing care contracts with new
12 residents. The provider shall *notify the department of its*
13 *intention to cease entering into continuing care contracts*
14 *and shall* continue to comply with all provisions of this
15 chapter until all continuing care ~~contractual~~ contract
16 obligations have been fulfilled.

17 SEC. 62. Section 1793.9 of the Health and Safety Code
18 is amended to read:

19 1793.9. (a) ~~Obligations pursuant to continuing care~~
20 ~~contracts executed by a provider~~ *In the event of*
21 *liquidation, all claims made against a provider based on*
22 *the provider's continuing care contract obligations shall*
23 ~~be deemed a preferred claim~~ *claims* against all assets
24 owned by the provider ~~in the event of liquidation.~~
25 However, ~~this~~ *these* preferred ~~claim~~ *claims* shall be
26 subject to any perfected claims secured by ~~mortgage,~~
27 ~~deed of trust, pledge, deposit as security, escrow, or~~
28 ~~otherwise secured the provider's assets.~~

29 (b) ~~In the event of liquidation by~~ *If the provider is*
30 *liquidated, residents who have executed a refundable*
31 *continuing care contract shall be deemed to have a*
32 *preferred claim to liquid assets held in the refund reserve*
33 *fund pursuant to Section 1793. This preferred claim shall*
34 *be superior to all other claims from residents without*
35 *refundable contracts; or any other creditor* *creditors.* If
36 this fund and any other available assets are not sufficient
37 to fulfill the refund obligations, *each resident shall be*
38 *distributed a proportionate amount of the refund reserve*
39 ~~funds shall be distributed to each resident in a~~
40 ~~proportionate amount,~~ determined by dividing the

1 amount of each resident's refund due by the total refunds
2 due and multiplying that percentage by the total funds
3 available.

4 (c) For purposes of computing the reserve required
5 pursuant to Sections 1792.2 and 1793, the liens required
6 under Section 1793.15 ~~shall~~ are not required to be
7 deducted from the value of real or personal property.

8 *SEC. 63. Section 1793.11 of the Health and Safety*
9 *Code is amended to read:*

10 1793.11. (a) Any transfer of money or property,
11 pursuant to a continuing care contract found by the
12 department to be executed in violation of this chapter, is
13 voidable at the option of the transferor for a period of 90
14 days from the execution of the transfer.

15 (b) *Any deed or other instrument of conveyance shall*
16 *contain a recital that the transaction is made pursuant to*
17 *rescission by the resident within 90 days from the date of*
18 *first occupancy.*

19 (c) No action may be brought for the reasonable value
20 of any services rendered between the date of transfer and
21 the date the ~~transferor~~ resident disaffirms the continuing
22 care contract.

23 ~~(e)~~

24 (d) With respect to real property, the right of
25 disaffirmance or rescission is conclusively presumed to
26 have terminated if a notice of intent to rescind is not
27 recorded with the county recorder of the county in which
28 the real property is located within 90 days from the date
29 of ~~execution of the conveyance by the transferor~~ first
30 occupancy of the residential living unit.

31 ~~(d) Any deed or other instrument of conveyance shall~~
32 ~~contain a recital that the transaction is made pursuant to~~
33 ~~rescission by the transferor within 90 days from the date~~
34 ~~of the transfer.~~

35 (e) ~~Any~~ A transfer of a sum of money or property, real
36 or personal, to anyone pursuant to a continuing care
37 contract that was not approved by the department is
38 voidable at the option of the department or transferor or
39 his or her assigns or agents.

1 (f) ~~Any~~—A transaction determined by the department
2 to be in violation of this chapter is voidable at the option
3 of the ~~transferor~~ resident or his or her ~~assigns~~ assignees or
4 agents.

5 *SEC. 64. Section 1793.13 of the Health and Safety*
6 *Code is amended to read:*

7 1793.13. (a) ~~In either of the following situations the~~
8 *The department may require the a provider to submit*
9 ~~within 60 days a financial plan detailing the method by~~
10 ~~which the provider proposes to overcome the~~
11 ~~deficiencies noted by the department. a financial plan, if~~
12 *either of the following applies:*

13 (1) ~~If a~~—A provider fails to file ~~an~~ a complete annual
14 report as required by Section 1790.

15 (2) ~~At any other time when the~~—The department has
16 reason to believe that the provider is insolvent, is in
17 imminent danger of becoming insolvent, is in a financially
18 unsound or unsafe condition, or that its condition is such
19 that it may otherwise be unable to fully perform its
20 obligations pursuant to continuing care contracts.

21 (b) *A provider shall submit its financial plan to the*
22 *department within 60 days following the date of the*
23 *department's request. The financial plan shall explain*
24 *how and when the provider will rectify the problems and*
25 *deficiencies identified by the department.*

26 (c) The department shall approve or disapprove the
27 plan within 30 days of its receipt.

28 ~~(e)~~—

29 (d) If the plan is approved, the provider shall
30 immediately implement the plan.

31 ~~(d)~~—

32 (e) If the plan is disapproved, or if it is determined that
33 the plan is not being fully implemented, the department
34 may, after consultation with and upon consideration of
35 the recommendations of the Continuing Care ~~Contracts~~
36 *Advisory Committee, consult with its financial*
37 *consultants to develop a corrective action plan at the*
38 *provider's expense, or require the provider to obtain new*
39 *or additional management capability approved by the*
40 *department to solve its difficulties. A reasonable period,*

1 as determined by the department, shall be allowed ~~to~~ for
2 the reorganized management to develop a plan which,
3 subject to the approval of the department and after
4 review by the committee, will reasonably assure that the
5 provider will meet its responsibilities under the law.

6 *SEC. 65. Section 1793.15 of the Health and Safety*
7 *Code is amended to read:*

8 1793.15. (a) When necessary to secure ~~the~~ an
9 applicant's or a provider's performance of ~~all~~ its
10 obligations ~~of the applicant or provider to transferors~~
11 ~~depositors or residents~~, the department may record a
12 notice or notices of lien on behalf of the ~~transferors~~
13 ~~depositors or residents~~. From the date of recording, the
14 lien shall attach to all real property owned or acquired by
15 the provider during the pendency of the lien, provided
16 such property is not exempt from the execution of a lien
17 and is located within the county in which the lien is
18 recorded. The lien shall have the force, effect, and
19 priority of a judgment lien.

20 (b) *The department may record a lien on any real*
21 *property owned by the provider if the provider's annual*
22 *report indicates the provider has an unfunded statutory*
23 *or refund requirement. A lien filed pursuant to this*
24 *section shall have the effect, force, and priority of a*
25 *judgment lien filed against the property.*

26 (c) The department shall file a release of the lien if the
27 department ~~deems~~ determines that the lien is no longer
28 necessary to secure the applicant's or provider's
29 performance of ~~all~~ its obligations ~~of the applicant or~~
30 ~~provider~~ to the ~~transferors~~ depositors or residents.

31 ~~(e) The~~

32 (d) *Within 10 days following the department's denial*
33 *of a request for a release of the lien, the applicant or*
34 *provider may file an appeal to with the department from*
35 *a refusal of a request for a release of the lien.*

36 ~~(d)~~

37 (e) The department's final decision shall be subject to
38 court review pursuant to Section 1094.5 of the Code of
39 Civil Procedure, upon petition of the applicant or
40 provider filed within 30 days of service of the decision.

1 SEC. 66. Section 1793.17 of the Health and Safety
2 Code is amended to read:

3 1793.17. (a) When necessary to secure the interests
4 of ~~transferors~~ depositors or residents, the department
5 may require that the applicant or provider reestablish an
6 escrow account, return previously released moneys to
7 escrow, and escrow all future entrance fee payments.

8 (b) The department may release funds from escrow as
9 it deems appropriate or terminate the escrow
10 requirement when it ~~deems~~ determines that the escrow
11 is no longer necessary to secure the performance of all
12 obligations of the applicant or provider to ~~the transferors~~
13 depositors or residents.

14 SEC. 67. Section 1793.19 of the Health and Safety
15 Code is amended to read:

16 1793.19. The civil, criminal, and administrative
17 remedies available to the department pursuant to this
18 article are not exclusive and may be sought and employed
19 by the department, in any combination ~~deemed~~
20 ~~advisable by the department~~ to enforce this chapter.

21 SEC. 68. Section 1793.21 of the Health and Safety
22 Code is amended to read:

23 1793.21. The department, in its discretion, may
24 condition, suspend, or revoke any permit to ~~sell deposit~~
25 ~~subscriptions~~ accept deposits, provisional certificate of
26 authority, or certificate of authority issued under this
27 chapter if it finds that any ~~one or more~~ of the following
28 apply to the applicant or provider:

29 (a) ~~Violation by the provider of~~ The applicant or
30 provider violated this chapter or the rules and regulations
31 adopted under this chapter.

32 (b) ~~Aiding, abetting~~ The applicant or provider aided,
33 abetted, or ~~permitting~~ permitted the violation of this
34 chapter or the rules and regulations adopted under this
35 chapter.

36 (c) ~~Suspension or revocation of the license of the~~
37 ~~provider~~ The provider's or applicant's license was
38 suspended or revoked pursuant to the licensing
39 provisions of Chapter 2 (commencing with Section 1250)
40 or Chapter 3.2 (commencing with Section 1569).

1 (d) ~~Material~~—*The provider or applicant made a*
2 *material misstatement, misrepresentation, or fraud in*
3 *obtaining the permit to sell deposit subscriptions accept*
4 *deposits, provisional certificate of authority, or certificate*
5 *of authority.*

6 (e) ~~Demonstrated~~—*The provider or applicant*
7 *demonstrated a lack of fitness or trustworthiness.*

8 (f) ~~Fraudulent~~—*The provider or applicant engaged in*
9 *any fraudulent or dishonest practices of management in*
10 *the conduct of business.*

11 (g) ~~Misappropriation, conversion~~—*The provider or*
12 *applicant misappropriated, converted, or withholding of*
13 *withheld moneys.*

14 (h) ~~Refusal by the provider~~—*After request by the*
15 *department for an examination, access to records, or*
16 *information, the provider or applicant refused to be*
17 *examined or to produce its accounts, records, and files for*
18 *examination, or refusal by any of its officers refused to*
19 *give information with respect to its affairs, or refused to*
20 *perform any other legal obligations as to such related to*
21 *an examination, when required by the department.*

22 (i) ~~The provider's~~—*The provider's or applicant's*
23 *unsound financial condition or use of.*

24 (j) *The provider or applicant used such methods and*
25 *practices in the conduct of business as to render further*
26 *transactions by the provider or applicant hazardous or*
27 *injurious to the public.*

28 ~~(j) Failure~~

29 (k) *The provider or applicant failed to maintain at all*
30 *times at least the minimum statutory reserves required*
31 *by Section 1792.2.*

32 ~~(k) Failure~~

33 (l) *The provider or applicant failed to maintain the*
34 *reserve fund escrow account for prepaid continuing care*
35 *contracts required by Section 1792.*

36 ~~(l) Failure~~

37 (m) *The provider or applicant failed to comply with*
38 *the refund reserve requirements of stated in Section*
39 *1793.*

40 ~~(m) Failure by the provider~~

1 (n) The provider or applicant failed to ~~maintain~~
2 comply with the requirements of this chapter for
3 maintaining escrow accounts for funds ~~as required by this~~
4 ~~chapter.~~

5 ~~(n) Failure~~

6 (o) The provider or applicant failed to file ~~an~~ the
7 annual report ~~as required by~~ described in Section 1790.

8 ~~(o) Violation of~~

9 (p) The provider or applicant violated a condition on
10 ~~a~~ its permit to accept deposits, provisional certificate of
11 authority, or certificate of authority.

12 ~~(p) Failure~~

13 (q) The provider or applicant failed to comply with its
14 approved financial and marketing plan, or to secure
15 approval of a modified plan.

16 ~~(q) A material change~~

17 (r) The provider or applicant materially changed or
18 ~~deviation~~ deviated from ~~the~~ an approved plan of
19 operation without the prior consent of the department.

20 ~~(r) Failure by the provider~~

21 (s) The provider or applicant failed to fulfill ~~its~~ his or
22 her obligations under continuing care contracts.

23 ~~(s) Material~~

24 (t) The provider or applicant made material
25 misrepresentations to depositors, prospective residents,
26 or residents of, a continuing care retirement community.

27 ~~(t) Failure by the provider~~

28 (u) The provider or applicant failed to submit
29 proposed changes to continuing care contracts prior to
30 use, or ~~execution of~~ using a continuing care contract that
31 has not been previously approved by the department.

32 ~~(u) Failure by the provider~~

33 (v) The provider or applicant failed to diligently
34 submit materials requested by the department or
35 required by the statute.

36 SEC. 69. Section 1793.23 of the Health and Safety
37 Code is amended to read:

38 1793.23. (a) The department shall consult with and
39 consider the recommendations of the Continuing Care
40 ~~Contracts~~ Advisory Committee prior to conditioning,

1 suspending, or revoking any permit to ~~sell—deposit~~
 2 ~~subscriptions~~ *accept deposits*, provisional certificate of
 3 authority, or certificate of authority.

4 (b) The provider shall have a right of appeal to the
 5 department. The proceedings shall be conducted in
 6 accordance with Chapter 5 (commencing with Section
 7 11500) of Part 1 of Division 3 of Title 2 of the Government
 8 Code, and the department shall have all of the powers
 9 granted therein. A suspension, condition, or revocation
 10 shall remain in effect until completion of the proceedings
 11 in favor of the provider. In all proceedings conducted in
 12 accordance with this section, the standard of proof to be
 13 applied shall be by a preponderance of the evidence.

14 (c) The department may, upon finding of changed
 15 circumstances, remove a suspension or condition.

16 *SEC. 70. Section 1793.25 of the Health and Safety*
 17 *Code is amended to read:*

18 1793.25. (a) During the period that the revocation or
 19 suspension action is pending against the permit to ~~sell~~
 20 ~~deposit—subscriptions~~ *accept deposits*, provisional
 21 certificate of authority, or certificate of authority, the
 22 provider shall not enter into any new *deposit agreements*
 23 *or* continuing care contracts ~~or—deposit—subscription~~
 24 ~~agreements~~.

25 (b) The suspension or revocation by the department,
 26 or voluntary return of the provisional certificate of
 27 authority or certificate of authority by the provider, shall
 28 not release the provider from obligations assumed at the
 29 time the continuing care contracts were executed.

30 *SEC. 71. Section 1793.27 of the Health and Safety*
 31 *Code is amended to read:*

32 1793.27. (a) If the department finds that *any entity*
 33 *has violated Section 1793.5 or* one or more grounds exist
 34 *for* ~~the discretionary condition, revocation~~ *conditioning,*
 35 *revoking, or suspension of* ~~suspending~~ a permit to ~~sell~~
 36 ~~deposit—subscriptions~~ *accept deposits*, provisional
 37 certificate of authority, or a certificate of authority issued
 38 under this chapter, the department, in lieu of the
 39 condition, revocation, or suspension, may impose ~~a~~ *an*
 40 administrative fine upon ~~the~~ *an applicant or* provider in

1 an amount not to exceed one thousand dollars (\$1,000)
2 per violation.

3 (b) The administrative fine shall be deposited in the
4 Continuing Care Provider Fee Fund and shall be
5 disbursed for the specific purposes of offsetting the costs
6 of investigation and litigation and to compensate
7 court-appointed administrators when continuing care
8 retirement community assets are insufficient.

9 *SEC. 72. Section 1793.29 of the Health and Safety*
10 *Code is amended to read:*

11 1793.29. In the case of any violation or threatened
12 violation of this chapter, the department may institute a
13 proceeding or may request the Attorney General to
14 institute a proceeding to obtain injunctive or other
15 equitable relief in the superior court in and for the county
16 in which the violation ~~occurs~~ *has occurred or will occur*,
17 or in which the principal place of business of the provider
18 is located. The proceeding under this section shall
19 conform with the requirements of Chapter 3
20 (commencing with Section 525) of Title 7 of Part 2 of the
21 Code of Civil Procedure, except that no undertaking shall
22 be required of the department in any action commenced
23 under this section, nor shall the department be required
24 to allege facts necessary to show lack of adequate remedy
25 at law, or to show irreparable loss or damage.

26 *SEC. 73. Section 1793.50 of the Health and Safety*
27 *Code is amended to read:*

28 1793.50. (a) The department, after consultation with
29 the Continuing Care ~~Contracts~~ *Advisory* Committee,
30 may petition the superior court for an order appointing
31 a qualified administrator to operate a continuing care
32 retirement community, and thereby mitigate *imminent*
33 crisis situations ~~wherein~~ *where* elderly residents ~~are left~~
34 ~~without means for their~~ *could lose support services or be*
35 moved without proper preparation, in any of the
36 following circumstances:

37 (1) The provider is insolvent or in imminent danger of
38 becoming insolvent.

39 (2) The provider is in a financially unsound or unsafe
40 condition.

1 (3) The provider has failed to establish or has
2 substantially depleted the reserves required by this
3 chapter.

4 (4) ~~A—The provider has failed to submit a plan, as~~
5 ~~specified in Section 1793.13, has not been approved by the~~
6 ~~department or has not approved the plan submitted by~~
7 ~~the provider; the provider has failed to implement the~~
8 ~~plan approved by the department~~ has not fully
9 implemented the plan, or the plan has not been
10 successful.

11 (5) The provider is unable to fully perform its
12 obligations pursuant to continuing care contracts.

13 (6) The residents are otherwise placed in serious
14 jeopardy.

15 (b) The administrator may only assume the operation
16 of the continuing care retirement community in order to
17 ~~either accomplish one or more of the following:~~
18 rehabilitate the provider to enable it fully to perform its
19 continuing care contract obligations;; implement a plan
20 of reorganization acceptable to the department;;
21 facilitate the transition ~~if~~ *where* another provider
22 assumes continuing care contract obligations;; or
23 facilitate an orderly liquidation of the provider.

24 (c) With each petition, the department shall include
25 a request for a temporary restraining order to prevent the
26 provider from disposing of or transferring assets pending
27 the hearing on the petition.

28 (d) The provider shall be served with a copy of the
29 petition, together with an order to appear and show cause
30 why management and possession of the provider's
31 continuing care retirement community or assets should
32 not be vested in an administrator.

33 (e) The order to show cause shall specify a hearing
34 date, which shall be not less than five nor more than 10
35 days following service of the petition and order to show
36 cause on the provider.

37 (f) Petitions to appoint an administrator shall have
38 precedence over all matters, except criminal matters, in
39 the court.

1 (g) At the time of the hearing, the department shall
2 advise the provider and the court of the name of the
3 proposed administrator.

4 (h) If, at the conclusion of the hearing, including such
5 oral evidence as the court ~~shall~~ may consider, the court
6 finds that any of the circumstances specified in
7 subdivision (a) exist, the court shall issue an order
8 appointing an administrator to take possession of the
9 property of the provider and to conduct the business
10 thereof, enjoining the provider from interfering with the
11 administrator in the conduct of the rehabilitation, and
12 directing the administrator to take steps toward removal
13 of the causes and conditions which have made
14 rehabilitation necessary, as the court may direct.

15 (i) The order shall include a provision directing the
16 issuance of a notice of the rehabilitation proceedings to
17 the residents at the continuing care retirement
18 community and to other interested persons as the court
19 shall direct.

20 (j) The court may permit the provider to participate
21 in the continued operation of the continuing care
22 retirement community during the pendency of any
23 appointments ordered pursuant to this section and shall
24 specify in the order the nature and scope of the
25 participation.

26 (k) The court shall retain jurisdiction throughout the
27 rehabilitation proceeding and may issue further orders as
28 it deems necessary to accomplish the rehabilitation or
29 orderly liquidation of the continuing care retirement
30 community in order to protect the residents of the
31 continuing care retirement community.

32 *SEC. 74. Section 1793.56 of the Health and Safety*
33 *Code is amended to read:*

34 1793.56. (a) ~~Reasonable compensation shall be paid~~
35 ~~to the~~ *The appointed administrator appointed is entitled*
36 *to reasonable compensation.*

37 (b) ~~Costs for the compensation shall~~ *The costs*
38 *compensating the administrator may be levied charged*
39 *against the assets of the provider. When facility the*
40 *provider's assets and assets from the continuing care*

1 *retirement community* are insufficient, the department,
2 in its discretion, may compensate the administrator from
3 ~~funds available from~~ the Continuing Care Provider Fee
4 Fund.

5 (c) Any individual appointed administrator, pursuant
6 to Section 1793.50, shall be held harmless for any
7 negligence in the performance of his or her duties and *the*
8 ~~provider shall be indemnified by~~ *indemnify* the ~~provider~~
9 *administrator* for all costs of defending actions brought
10 against him or her in his or her capacity as administrator.

11 *SEC. 75. Section 1793.58 of the Health and Safety*
12 *Code is amended to read:*

13 1793.58. (a) The department, administrator, or any
14 interested person, upon due notice to the administrator,
15 at any time, may apply to the court for an order
16 terminating the rehabilitation proceedings and
17 permitting the provider to resume possession of the
18 provider's property and the conduct of the provider's
19 business.

20 (b) ~~No order shall be granted—~~*The court shall not issue*
21 *the order requested* pursuant to subdivision (a) ~~except~~
22 ~~when unless~~, after a full hearing, the court has
23 determined that the purposes of the proceeding have
24 been fully and successfully accomplished and that the
25 continuing care retirement community can be returned
26 to the provider's management without further jeopardy
27 to the residents of the continuing care retirement
28 community, creditors, owners of the continuing care
29 retirement community, and to the public.

30 (c) ~~An—~~*Before issuing any* order terminating the
31 rehabilitation proceeding *the court shall be based upon*
32 *consider* a full report and accounting by the administrator
33 ~~of regarding the provider's affairs, including~~ the conduct
34 of the provider's officers, employees, and business during
35 the rehabilitation and ~~of the provider's current financial~~
36 condition.

37 (d) Upon issuance of an order terminating the
38 rehabilitation, the department shall reinstate the
39 provisional *certificate of authority* or ~~final~~ certificate of
40 authority ~~and~~. *The department may condition, suspend,*

1 or revoke the reinstated certificate only upon a change in
2 the conditions *existing* at the time of the order or a
3 ~~determination upon the discovery~~ of facts which, ~~if such~~
4 ~~facts had been known at the time of the order, the court~~
5 ~~would not have entered the order as determined by the~~
6 ~~department~~ the department determines would have
7 resulted in a denial of the request for an order
8 terminating the rehabilitation had the court been aware
9 of these facts.

10 SEC. 76. Section 1793.60 of the Health and Safety
11 Code is amended to read:

12 1793.60. (a) If at any time the department
13 determines that further efforts to rehabilitate the
14 provider would not be in the best interest of the residents
15 or prospective residents, or would not be economically
16 feasible, the ~~director~~ department may, with the approval
17 of the Continuing Care ~~Contracts~~ Advisory Committee,
18 apply to the court for an order of liquidation and
19 dissolution or may apply for other appropriate relief for
20 dissolving the property and bringing to conclusion its
21 business affairs.

22 (b) Upon issuance of an order directing the liquidation
23 or dissolution of the provider, the department shall
24 revoke the provider's provisional *certificate of authority*
25 or ~~final~~ certificate of authority.

26 SEC. 77. Section 1793.62 of the Health and Safety
27 Code is amended to read:

28 1793.62. (a) The department, administrator, or any
29 interested person, upon due notice to the parties, may
30 petition the court for an order terminating the
31 rehabilitation proceedings when the rehabilitation
32 efforts have not been successful, the continuing care
33 retirement community has been sold at foreclosure sale,
34 the provider has been declared bankrupt, or the provider
35 has otherwise been shown to be unable to perform its
36 obligations under the continuing care contracts.

37 (b) ~~No order shall be granted—The court shall not issue~~
38 ~~the order requested pursuant to subdivision (a)~~ unless all
39 of the following have occurred:

1 (1) There has been a full hearing and the court has
2 determined that the provider is unable to perform its
3 contractual obligations.

4 (2) The administrator has given the court a full and
5 complete report and financial accounting signed by the
6 administrator as being a full and complete report and
7 accounting.

8 (3) The court has determined that the residents of the
9 continuing care retirement community have been
10 protected to the extent possible and has made such orders
11 in this regard as the court deems proper.

12 *SEC. 78. No reimbursement is required by this act*
13 *pursuant to Section 6 of Article XIII B of the California*
14 *Constitution because the only costs that may be incurred*
15 *by a local agency or school district will be incurred*
16 *because this act creates a new crime or infraction,*
17 *eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section*
19 *17556 of the Government Code, or changes the definition*
20 *of a crime within the meaning of Section 6 of Article*
21 *XIII B of the California Constitution.*

